

S. HRG. 113-795

**HEARING ON THE NOMINATIONS OF JEFFERY
M. BARAN AND STEPHEN G. BURNS TO BE
MEMBERS OF THE NUCLEAR REGULATORY
COMMISSION**

**HEARING
BEFORE THE
COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
ONE HUNDRED THIRTEENTH CONGRESS**

SECOND SESSION

SEPTEMBER 9, 2014

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ONE HUNDRED THIRTEENTH CONGRESS
SECOND SESSION

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HEARING ON THE NOMINATIONS OF JEFFERY M. BARAN AND STEPHEN G. BURNS TO BE MEMBERS OF THE NUCLEAR REGULATORY COMMISSION

WEDNESDAY, SEPTEMBER 9, 2014

**U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.**

The committee met, pursuant to notice, at 10 a.m. in room 406, Dirksen Senate Building, Hon. Barbara Boxer (chairman of the committee) presiding.

Present: Senators Boxer, Whitehouse, Cardin, Markey, Inhofe, Barrasso, Sessions and Fischer.

OPENING STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator BOXER. Good morning.

Today, the EPW Committee is considering two nominees for the Nuclear Regulatory Commission, Jeffrey Baran and Stephen Burns.

These two nominees are qualified and accomplished professionals who have demonstrated that they have the ability to get the job done.

Mr. Baran has had more than 10 years of experience working on nuclear energy issues in the House, including his current role as Staff Director for Energy and Environment on the Energy and Commerce Committee.

That is why we have been graced this morning by the presence of Congressman Henry Waxman, one of my heroes in politics. He is going to introduce one of our nominees.

I want to say that Mr. Baran has also spent more than 5 years as that committee's counsel and 5 years as counsel on the House Oversight and Government Reform Committee. At the Energy and Commerce Committee, Mr. Baran was the lead staffer on 13 NRC hearings, including those related to NRC structure, nuclear waste and post-Fukushima safety. He also worked on the legislation related to the NRC and other nuclear issues.

On a personal note, I do want to say congratulations to Mr. Baran and your wife on the birth of your son, Gus, on Friday. That is a milestone you will never forget.

Over the past three decades, Mr. Burns has served in many roles at NRC. Most recently, Mr. Burns served as General Counsel from 2009 to 2012. He also served as senior staffer to a former chairman

and deputy director of the Region Operations and Enforcement Division. Mr. Burns has played a critical role in a wide range of NRC policy and enforcement activities.

Since 2012, Mr. Burns has been the head of legal affairs for the Organization for Economic Cooperation and Development's Nuclear Energy Agency.

We all know NRC's mission is "to ensure the safe use of radioactive materials for beneficial civilian purposes while protecting people and the environment." I want to repeat that because I think it is worth repeating. The NRC's mission is "to ensure the safe use of radioactive materials for beneficial civilian purposes while protecting people and the environment."

I believe the experience and understanding of both the nominees of NRC's legal framework will serve them well in supporting NRC's mission. Rather than take the committee's time in expressing my concerns about what is happening in California, I will ask both nominees, at the appropriate time, if they will work with me.

We have a plant that is being decommissioned. They are asking for all kinds of exemptions from safety rules. That concerns me. We have another plant that has not met the standards consistent with the new earthquake information that we now know.

I have particular concerns but rather than go into them in my opening statement, I will save them for later. I do want to say in all the time that I have been here, I think these are the two most qualified candidates I have seen.

That makes me really happy because this is really important as our nuclear plants are aging. We need to make sure that they are safe because frankly, if they are not safe and if they cause problems, they are problems for the entire industry and the industry's future. That is where I stand on it.

Senator BOXER. I know that Representative Waxman has other things he must do so if it is OK with the committee.

Senator INHOFE. That is fine.

Senator BOXER. Thank you, Senator Inhofe.

We will turn to Representative Waxman. Welcome.

OPENING STATEMENT OF HON. HENRY WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you, very much, Madam Chairman and members of the committee.

It is a great honor for me to be with you today to introduce Jeff Baran, who I believe will be an enormously effective NRC commissioner.

Jeff has had quite a week. Madam Chair, you alluded to the fact that his son, Gus, was just born 4 days ago. It was a question of timing because I think some thought the birth might happen today and then he would have to make a choice of being here or with the birth of his child. I would hope you would put your official duties higher but you did not have to make that choice. Also, today is the first day for his daughter, Mia, to go to preschool.

Jeff was born and raised in Illinois, went to school in Ohio, to grad school and then to law school at Harvard where he met his wife, Michelle.

I can attest to the fact that he is a very effective, reliable member of the staff. He worked with me when I was chairman of the Oversight and Government Reform Committee. In that capacity, he worked on important legislation that had strong bipartisan support.

Congressman Davis, who was chairman of the committee during part of the time, worked on a bipartisan basis to get reform legislation on contracting so that we could make sure we were protecting the taxpayers of this country from waste, fraud and abuse.

When I became chairman of the Energy and Commerce Committee, he came over to that committee and has worked on energy issues where he has also been very skillful in crafting bipartisan proposals with the Republicans on our committee.

He is an expert on the NRC and any other energy issues at the Department of Energy. When he worked on legislation, he looked for a way to build a consensus. A good example of that was the pipeline safety bill of 2012. I think it passed the House and the Senate unanimously.

He also had legislation to develop consensus adjustments to efficiency standards for walk-in freezers and other appliances. Also, the hydropower bill that President Obama signed into law is an example of his efforts to reach a consensus on a bipartisan basis.

Jeff is a fair and an open-minded person who listens to all sides. He is able to take tough issues and work together with his colleagues to get things done. I cannot think of anyone from my own experience that is more skilled and collegial, who will be a major asset as an NRC commissioner.

I want to introduce him to you and take my leave because my committee is meeting at the same time.

Senator BOXER. Of course, Congressman.

Mr. WAXMAN. I would be happy to talk with any of you privately about him to tell you the things I am not saying publicly but all those things would be consistent with what I have said today. I think he will do a great job. I urge you to give him favorable consideration.

Senator BOXER. Thank you, Congressman.

We will turn to Senator Inhofe and then Senator Cardin.

**OPENING STATEMENT OF HON. JAMES INHOFE,
U.S. SENATOR FROM THE STATE OF OKLAHOMA**

Senator INHOFE. Thank you, Madam Chair.

I had a chance to visit with both nominees yesterday and had a very thorough discussion of some of the problems that are out there. I think they will work well together.

I was a little disturbed about the rapid process we are using. There is an effort to even do this prior to the recess, so I appreciate the fact that we had that time. Yet, I think the questions for the record are going to be due by the end of today, is my understanding, and then they have a 24-hour turnaround. Normally, that process takes several days and sometimes, several weeks.

We understand we are going to be moving on with this. We usually provide about 2 weeks for us to craft questions for the record but we are ready to do this now.

That said, there are a lot of problems at the NRC happening right now. In 2003, when I was chairman of the Air Subcommittee, I helped shepherd the 30 percent increase in the NRC's budget.

I might add, I discussed this with both nominees, that at that time, when I became chairman, at that time Republicans were in majority and I chaired that subcommittee, they had not had an Oversight Committee hearing in I think it was 12 years. Mr. Burns, I think you were very much aware of what was going on at that time.

We have changed that. We have had a chance to talk about these things, to prepare and be a little more deliberate. As I recall, we actually put out every three or 4 months, we were going to have an oversight hearing with certain expectations. I think that was a major improvement.

During that time, I helped shepherd a 30 percent increase in the NRC's budget at its request to accommodate the expected nuclear renaissance that we thought was coming. It was expected at that time that four design certificates and 17 construction and operating license applications would be considered by the NRC.

At that time, the agency had about 1,500 employees nationwide and the operating budget was about \$300 million a year. Today, the budget exceeds \$1 billion a year and the agency employees 3,800.

The agency has now grown above and beyond the 30 percent I helped shepherd and has more than doubled. Since then, the agency has had less than half the work that we anticipated at that time to justify the increased budget. It has approved only one design certificate and two new license applications.

A legitimate review of the agency's staff levels and current workloads needs to be examined by the Commission. I have talked with both of you about this and cuts need to be made if current staffing levels cannot be justified when compared to the mission and the needs of the NRC, then versus now.

This simple question needs to be asked: can we do the same job with 1,500 like we did before instead of the current 3,800 employees?

The main consequence of an overstaffed NRC, in my opinion, is over regulation. I talked about this. They sit around there with nothing to do and not enough to do. They have a lot of people so what do they do? Their tendency is to regulate more. I think this is what we are looking at right now.

Many of these new regulations have been in response to the Fukushima disaster in Japan. While each rule by itself may not be considered costly, when added to the many other orders and regulations being considered, the cumulative costs skyrocket.

This has become particularly problematic for the industry as it has struggled to regain its footing during a season of intense competition and shaky profitability, making the industry increasingly sensitive to the expensive regulations.

The NRC needs to recognize this and take into full consideration as it considers its existing regulations and any new ones. This is kind of similar to the EPA, what they propose for its air rule, Section 321(a) of the Clean Air Act says they are supposed to keep track of their regulations and their cumulative costs.

You are supposed to be doing the same. I think that is very important. The EPA has not been doing this but the EPA is an adversarial agency. That is not the situation today. They do not try to understand the needs of industry and the American people. They always have a political axe to grind.

The NRC has not been that way and should not become that way. We expect more from the NRC and those are the things that I spoke privately with you about in my office. They were things I think you need to address and I look forward to the testimony of our witnesses.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR
FROM THE STATE OF OKLAHOMA

Mr. Burns and Mr. Baran, thank you for being here. Madam Chairman, while I appreciate that we're having this hearing today, I'm concerned about the expedited timeline on which we're considering these nominees. The President nominated them just before the August recess, and there was an effort on the part of this Committee to conduct the confirmation hearing during the last week of the session—and before the Committee received any of the paperwork from the nominees.

While we were able to delay the hearing until now, the timeline is still rushed. I don't believe everyone on the Committee has even had the opportunity to meet with the nominees in person, and yet it's my understanding that the Questions for the Record will be due tomorrow, turned around in 24 hours by the nominees, and then we'll have a business meeting to mark them up and send them to the floor on Thursday. Usually we provide about 2 weeks for Members to craft their QFRs and then consider the nominees only after Members have received satisfactory answers back. That said, we have a lot of problems at the NRC right now. Back in 2003, I helped shepherd a 30 percent increase in the NRC's budget—at its request—to accommodate the expected nuclear renaissance. It was expected at that time that 4 design certificates and 17 Construction and Operating License Applications would be considered by NRC.

At that time, the agency had about 1,500 employees nationwide, and the operating budget was about \$300 million per year. Today, the budget exceeds \$1 billion per year and the agency employs 3,800 people. The agency has now grown above and beyond the 30 percent I helped shepherd. It's more than doubled. And since then, the agency has had less than half of the work that we anticipated—it has approved only one design certificate and two new license applications.

A legitimate review of the agency's staff levels and current workloads needs to be examined by the Commission, and cuts need to be made if current staff levels cannot be justified when compared to the mission and needs of the NRC. This simple question needs to be asked: can we do the same job with 1,500 like we did before, instead of with our current 3,800? The main consequence of an overstaffed NRC is overregulation, and we've seen this with the relaxed perspective the agency has taken on the cumulative cost of its regulations. Many of these new regulations have been in response to the Fukushima disaster in Japan, and while each rule by itself may not be considered costly, when added to the many other orders and regulations being considered, the cumulative costs skyrocket.

This has become particularly problematic for the industry as it has struggled to regain its footing during a season of intense competition and shaky profitability, making the industry increasingly sensitive to expensive regulations that do little—if anything—to actually improve their safe operation. NRC needs to recognize this and take it into full consideration as it considers its existing regulations and any new ones. This is something the EPA is supposed to do for its air rules. Section 321(a) of the Clean Air Act says they are supposed to keep track of their regulations' cumulative cost. EPA has not been doing this, but EPA is an adversarial agency. They do not try to understand the needs of industry and the American people. They always have a political axe to grind. NRC hasn't been that way—and it should not become that way. I expect more from the NRC, and I hope you two appreciate where I am coming from.

Again, thank you again for being here; I look forward to asking you questions.

Senator BOXER. Thank you, Senator.

I just want to reassure my colleagues on both sides that Senator Vitter and I worked on how to handle these openings together. We never went forward until we got his approval. It is because we have two vacancies and he urged us to apply the same sense of urgency.

Senator INHOFE. I was not complaining about it. It was just an observation.

Senator BOXER. I know, and it is a very legitimate observation, but we did have a resignation and someone who was not re-appointed. I just want to reassure the committee that we would never have done this if we didn't have the agreement of Senator Vitter.

Also, Senator, you have pointed out many times the lack of oversight but since I became chairman, we have done nine oversight hearings. I just wanted to make that clear for the record.

Senator Whitehouse has agreed to allow Senator Cardin to go first because of his schedule, plus he is going to introduce Mr. Burns.

**OPENING STATEMENT OF HON. BENJAMIN CARDIN,
U.S. SENATOR FROM THE STATE OF MARYLAND**

Senator CARDIN. Madam Chair, first of all, thank you for accommodating this hearing. Let me thank Senator Whitehouse for allowing me to go next so I can get the introduction of Mr. Burns shortly after Congressman Waxman introduced Mr. Baran.

We welcome both of you and your families and we thank you both for your willingness to serve our country. We know it is a family event, public service, so we also thank your families for this.

As the Senator from Maryland, I take great interest in NRC since it is headquartered in Rockville, Maryland. Maryland has two nuclear reactors at Culvert Cliffs. It is a matter of great importance to Maryland.

NRC is an independent agency that neither promotes nor hinders nuclear power but regulates it in the most efficient and effective way, recognizing the need for public safety and our environment. I strongly support its mission. I am pleased our two nominees are willing to serve in this extremely important position.

Mr. Burns is a dedicated public servant who spent 33 years at NRC before becoming the head of Legal Affairs for the Organization for Economic Cooperation and Development, OECD, a nuclear energy agency in Paris, a position he has held since 2012.

Mr. Burns was NRC's general counsel from 2009 to 2012, deputy general counsel from 1998 to 2009, and associate general counsel for Hearings, Enforcement and Administration from 1994 to 1998.

I would emphasize that Mr. Burns was promoted to general counsel by then NRC Chairman, Dale Klein, a Republican. He works across party lines very effectively.

Steve Burns also served at NRC as director of the Office of Commission Appellate Adjudication from 1991 to 1994, executive assistant to the then NRC chairman, Kenneth Carr from 1989 to 1991, legal assistant to Commissioner Carr from 1986 to 1989 and deputy director of the Regional Operations and Enforcement Division from 1986 to 1991. He began his career at NRC as an attorney in the Regional Operations and Enforcement Division in 1978.

I went through all that because I don't think we can find anyone who has more experience with NRC than Mr. Burns. He has devoted his life to these issues.

He received his BA from Colgate University, his JD from the George Washington University Law Center and has been a long time resident of the State of Maryland and we are very proud of that, except for the time that he lived in Paris because of his duties at OECD. We will forgive you for your leaving us for that short period of time.

I know that Christopher, your son, is here. You have a daughter, Allison, who I have been told was a member of the field hockey championship in our State. Congratulations to her.

Steve Burns and his wife, Joan, have been active in local community organizations such as the PTA, Boy Scouts and their church.

Madam Chair, I doubt if we could find a more qualified individual to fill this extremely important role. I am very proud to introduce Stephen Burns to the committee. I would urge his favorable consideration.

Senator BOXER. Thank you, Senator Cardin.
Senator Sessions.

**OPENING STATEMENT OF HON. JEFF SESSIONS,
U.S. SENATOR FROM THE STATE OF ALABAMA**

Senator SESSIONS. Thank you, Madam Chair.

I thank our nominees. I enjoyed the opportunity to meet with you and discuss my ideas, insights and concerns about the Nuclear Regulatory Commission. It is a very, very important commission. You would be taking seats that have been held by very competent persons.

It was said earlier that you two are the most qualified nominees we have had. I don't think that is accurate really. Former NRC Commissioner George Apostolakis, who is being replaced, is a member of the National Academy of Engineering and has a PhD in Engineering Science and Applied Mathematics.

He received awards for his contributions to nuclear safety before his nomination and was a noted risk analysis expert, the kind of background you would look for. Former NRC Commissioner William Magwood, IV, who is being replaced, served for many years as the Department of Energy's Nuclear Energy Director. That is the work he focused on and helped arrest the decline in nuclear energy engineering in the United States. At the time of his nomination, he was familiar with the technical and technological aspects of the nuclear industry.

I feel we have a lawyer who comes from a little different background. Mr. Baran served as a staff member to Congress. They did have some oversight of nuclear issues but that wasn't your primary duty. Senator Waxman referred to the pipeline safety legislation, hydropower legislation, not focused primarily on nuclear issues. Mr. Burns, you have a long resume as a legal staffer.

I expressed my concern to you about the memo for then Chairman Jaczko authorizing him to assume emergency powers that I think was unwise. I do not believe the accident in Japan justified giving a legal opinion, whether he exercised it or not fully, but you gave a legal opinion that would authorize him to execute decisions

on behalf of the NRC without consulting other members. I think that was a mistake.

I am also concerned about the court criticism of the Nuclear Regulatory Commission's actions with regard to Yucca Mountain. I think some of the efforts you made there legally have been criticized in that regard.

Gentlemen, I know nothing bad about you personally. You have a general appreciation for the issues relevant to this institution. It is not in my view the perfect resume.

I understand Senator Reid thinks he has great influence over this commission and these nominees are a part of his involvement. He certainly has opposed Yucca Mountain. We spent \$15 billion preparing that site and still have not yet had it operational.

In conclusion, thank you for your willingness to serve. You are entitled to fair and just consideration. I served with Senator Inhofe when I first came to the Senate on that committee, when he chaired that subcommittee. We spent a lot of time talking about nuclear issues for America.

I believe that nuclear power has to be a part of the mix. We have 50 to 60 years where not one American has been killed or made ill even as a result of a nuclear power accident. It represents 60 percent of the carbon free electricity generated in America.

This commission, at this critical time, has the potential for good to help this industry survive and be successful in a safe way and it can go in the other direction. It can burden the industry so much that it cannot be successful in the future.

If you are confirmed, I hope you will understand the gravity of the office you would be undertaking and understand these issues as you do your work and would be willing to resist political and emotional pressures and do the right thing for the country.

Thank you.

Senator BOXER. Thank you, Senator.

We will now turn to Senator Whitehouse.

**OPENING STATEMENT OF HON. SHELDON WHITEHOUSE,
U.S. SENATOR FROM THE STATE OF RHODE ISLAND**

Senator WHITEHOUSE. Just briefly.

As chairman of the Clean Air and Nuclear Safety Subcommittee, I just want to say that I support both of these nominees.

I share Senator Sessions' sentiment regarding the carbon free nature of nuclear power and would urge these candidates, if they are confirmed, to make sure that the Commission is not an undue impediment, particularly to the development of new nuclear technologies like thorium reactors, traveling wave reactors and small modular reactors.

I think there is enormous promise in those, particularly in ones that can burn through our existing nuclear waste and turn it back into healthy power and energy rather than sitting there as poisonous and dangerous waste.

Also, I will urge them both to be active on the safety side. Here I have a Rhode Island interest. Rhode Island is within the 50 mile ingestion exposure pathway for both the Pilgrim and Millstone nuclear plants which are not located in our State but, as I said, we are in the risk area for them if things go wrong.

I think it is very important that the NRC be active in making sure that the operators of these plants are energetically participating in the safety and potential evacuation measures that need to be established and in place in case there is an event.

It is not exactly what the industry wants to lead with so I think it is important for the NRC to be a strong voice in that area.

Based on conversations I have had with both applicants, I think they understand my views and I am prepared to support their nominations.

May I ask unanimous consent that my full statement be made a matter of record?

Senator BOXER. Without objection, so ordered.

Senator WHITEHOUSE. Thank you, Madam Chairman.

[The prepared statement of Senator Whitehouse follows:]

STATEMENT OF HON. SHELDON WHITEHOUSE, U.S. SENATOR
FROM THE STATE OF RHODE ISLAND

Thank you, Chairman Boxer and Ranking Member Vitter, for holding this hearing to consider the nominations of Jeffery Baran and Stephen Burns to serve as members of the Nuclear Regulatory Commission.

One of the NRC's most important functions is to ensure our country's active and retired reactors are safe and secure. We don't have any nuclear power plants in Rhode Island, but we are within the 50-mile Ingestion Exposure Pathway of the Millstone nuclear power station in Connecticut and the Pilgrim nuclear power station in Massachusetts. Both plants sit on the Atlantic Coast, where they face increasing risks from extreme weather events, coastal flooding, and sea-level rise, caused by carbon pollution changing our atmosphere and oceans. Ensuring these facilities can withstand natural disasters or other emergencies is important to Rhode Island, especially in the face of rising threats from climate change.

The Fukushima disaster reminds us that technology at the world's nuclear facilities has remained largely stagnant over the past sixty years, despite significant scientific advances and how high the stakes are. In the U.S., our nuclear fleet is aging, and in the last few years, many reactors have gone offline.

An aging and retiring fleet raises questions about safety, but also presents new challenges. When nuclear reactors close, other power sources generally must fill the gap. To reduce carbon pollution—particularly, to meet the targets outlined in the President's Climate Action Plan—we must explore all potential options and technologies for zero-carbon power. This includes the continued, safe use of our existing reactors, and investing in advanced nuclear technologies, such as small modular reactors and traveling wave reactors, which may be able to produce abundant energy while generating less carbon pollution.

The NRC has an important role to play in the implementation of advanced nuclear technologies by promptly reviewing new reactor designs and applying the lessons learned from disasters like Fukushima to ensure that designs are safe.

The nominees before us are eminently qualified and up to the task.

Jeff Baran is a long-time congressional aide who has significant energy expertise, including through his work on the House Energy and Commerce Committee, where he helped oversee NRC's programs, policies, licensing, and budget. Mr. Baran has a strong record of working on bipartisan legislation, including bills to address pipeline safety, drilling safety, electric grid security, electric grid reliability, medical isotopes, hydropower licensing, and energy efficiency. His congressional experience, knowledge of nuclear issues and the energy sector more broadly, and his willingness and ability to work across the aisle will serve him, the NRC, and this Committee well as we work to address our nation's nuclear challenges.

Stephen Burns is also well qualified to serve as an NRC Commissioner. His more than thirty years of experience working at NRC, including as General Counsel, speak to his immense knowledge of the agency and the issues it faces, as well as his dedication to public service. Mr. Burns has worked for multiple NRC Chairmen and dozens of Commissioners over his career, and will be a strong addition to the NRC as a Commissioner himself.

If they are confirmed, the NRC will benefit from the independent judgment and expertise of both Jeff Baran and Stephen Burns. I welcome the nominees to our Committee today, and am pleased to support their nominations.

Senator BOXER. Senator Barrasso.

**OPENING STATEMENT OF HON. JOHN BARRASSO,
U.S. SENATOR FROM THE STATE OF WYOMING**

Senator BARRASSO. Thank you, Madam Chairman.

I appreciate the opportunity to have this hearing today on the two nominees to sit on the Nuclear Regulatory Commission. Congratulations to both of you on your nominations.

First, let me say that the Nuclear Regulatory Commission is vital to ensuring nuclear safety. It is important for this committee to make sure this mission is carried out effectively.

Although there are some who may question policy decisions made by the Commission, I believe, Madam Chairman, that we have come a long way from where the Commission was just a few years ago under the previous chairman.

I am always concerned that the progress the NRC has made could be undone if we don't have qualified individuals in all the commissioner slots on the Commission. For example, the Administration failed to renominate Commissioner Apostolakis to continue his tenure on this Commission.

I don't understand the rationale for this at all. I agree with Senator Sessions. He was a vital member of the Commission with years of experience and the President failed to renominate him. It appears that politics, not qualifications, were at the heart of the decision.

In an article that appeared in Politico on August 27 entitled, "How Reid Holds Veto Power Over Obama," the article describes the Majority Leader's strong influence in micromanaging the selection of nominees to the NRC as well as the Federal Energy Regulatory Commission for political gain.

The article states, "The Nevada Democrat's unusually tight grip on nominations for the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission has given him an effective veto power over the people Obama appoints to their five-member leadership boards. They, in turn, have advanced policy priorities important to his State from blocking the proposed nuclear waste site in Yucca Mountain to opening the electrical grid to more wind, solar and geothermal plants across the west."

Madam Chairman, I ask unanimous consent that a copy of this article from Politico be included in the record.

Senator BOXER. Without objection.

[The referenced information follows:]



POLITICO

How Reid holds veto power over Obama

By Darius Dixon
August 27, 2014 05:05 AM EDT

Even in a hopelessly gridlocked Congress, Senate Majority Leader Harry Reid has found a way to work his will on energy policy — by micromanaging President Barack Obama's appointments to two normally placid agencies.

The Nevada Democrat's unusually tight grip on nominations for the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission has given him an effective veto power over the people Obama appoints to their five-member leadership boards. They in turn have advanced policy priorities important to his state, from blocking the proposed nuclear waste site in Yucca Mountain to opening the electrical grid to more wind, solar and geothermal plants across the West.

Reid's role allows him to send the message that he's Nevada's best hope for fostering an economically promising green-energy industry and avoiding becoming the destination for the nation's radioactive waste. "As a majority leader, if you don't take on these parochial issues and use your considerable clout to defend your state's interests, you really serve at great peril," said Eric Washburn, a lobbyist who was an aide to former Senate Majority Leader Tom Daschle (D-S.D.) and briefly worked for Reid.

(PHOTOS: Harry Reid's career)

But that also means that when a favored appointee runs into trouble, Reid gets embroiled in the mess too — and he's made it clear he's keeping score.

One NRC commissioner was forced out last month and another is due to depart Sunday after it became clear he'd have trouble winning a new term, partly because of their stances on Yucca and because they joined a revolt against former agency Chairman Gregory Jaczko, a onetime Reid aide. Reid has spent the past two years repeatedly trashing one of those commissioners, Obama appointee William Magwood, calling him a "disaster," "unethical," "incompetent," a "sh— stirrer" and a "first-class rat."

Reid also opposed extending the chairmanship of FERC leader Cheryl LaFleur this summer, telling The Wall Street Journal that she had tried to undo policies of another of his allies, former Chairman Jon Wellinghoff.

(Also on POLITICO: How the Senate reshaped the courts)

In these cases, Reid's agenda isn't a partisan one. In fact, most of the appointees who have felt his sharpest stings are Democrats.

Moreover, both the NRC and FERC are nominally independent agencies, whose leaders are difficult to remove from their posts.

Senate majority leaders wield power over confirmations as a matter of course, but Reid has shown special interest in FERC, which oversees the electric grid, and the NRC, which regulates nuclear power plants. Typically, the chairs of the Senate Energy and Natural Resources Committee and Environment and Public Works Committee play the lead role in vetting those agencies' White House nominees.

And the results of Reid's interventions haven't always been pretty. Not only did Jaczko depart the NRC early, amid accusations of verbally abusing employees and colleagues, but FERC has also seen an unusual amount of drama in the past year, including the flame-out of Reid-supported FERC nominee Ron Binz under fierce opposition from the coal industry and conservative groups.

Alaska Sen. Lisa Murkowski denounced Reid's heavy-handedness while complaining that his moves at the NRC have left nuclear policy in "full disarray."

"His efforts to impose his handpicked choices on the NRC and FERC — to name just two — have politicized what should be policy-based, independent agencies," said Murkowski, the top Republican on the Senate energy panel.

GOP strategist and lobbyist Mike McKenna called Reid's comments about LaFleur especially disturbing. "I don't think it's terribly healthy that a U.S. Senate majority leader gets himself on the record saying, basically, 'Hell yeah, I'm hijacking a regulatory agency,'" he said.

Even among people who support his policies, Reid's hardball tactics can raise eyebrows.

(Also on POLITICO: Reid backs military gear to police)

"The NRC and FERC appear to be unique in that Reid exerts influence over the selection of chairmen," said Tyson Slocum, who directs Public Citizen's energy program and has supported Obama's FERC nominees. From the standpoint of promoting good government, he said, "I do think that it's time that Reid hand over his control back to the Senate committee chairs."

Reid's office repeatedly declined to respond to questions from POLITICO or submit to an interview, but he offered a snarky defense when The Wall Street Journal asked him in June about the attention he was paying to FERC nominees.

"Oh really? No kidding," Reid told the newspaper. "Wow, that is amazing — that a majority leader who has a responsibility of selecting people would have some opinion as to who he suggests to the White House."

Some observers of the agencies suggest that Reid's influence over them stems partly

from a relative lack of interest by the White House.

"I have no past experience to suggest the White House cares about FERC confirmations — Reid seems to have domain over that," one electric industry source said by email.

One longtime analyst of FERC said, "What we know is axiomatic in this town is that when the White House creates a vacuum by not managing these things, expending some time and energy on these nominations, somebody else will step into the vacuum."

The White House wouldn't comment on its nomination process but says it worked in partnership with Reid on the recently approved confirmation of FERC Commissioner Norman Bay, who is due to become chairman next spring under a deal that also gave LaFleur a fresh five-year term on the board.

"We, of course, work closely with Sen. Reid and other members of the Senate to nominate and confirm the best, most qualified candidate for open positions across the government," then-White House energy spokesman Matt Lehrich said last month.

Others say that in the case of FERC, the stakes of the nominations have been raised because of the administration's carbon policies.

"To a certain extent, it's becoming a bit of a proxy in the 'War on Coal' rhetorical battle," said Washburn, the former Daschle aide, who now works for the firm Bracewell & Giuliani.

Reid's interest in FERC stretches back more than a decade, to Enron's manipulation of power prices in California, said Chris Miller, a former Reid energy adviser who's a fellow at the Democratic-leaning think tank Third Way.

"Obviously, California was the big kahuna, but Nevada ratepayers got slapped pretty hard by that too," said Miller, who's also a lobbyist. He said that helps explain Reid's interest in Bay, who spent his time as FERC's enforcement chief going after companies accused of manipulating the energy markets.

Reid also believes that "a better functioning market with more connections with a modernized grid" will help wind farms, solar plants and other renewable-energy projects in remote locations, Miller said, adding that FERC enacted policies with those aims when Wellinghoff was chairman.

Miller recalled showing Reid maps of transmission development in the West, and "it looked an awful lot like Nevada was becoming the doughnut hole" that would make it difficult to get renewable energy projects going. That's probably why Reid has insisted so strongly on putting a Westerner — such as Binz, who's from Colorado, or Bay, from New Mexico — in FERC's top job, Miller said.

Some who follow the agencies say Reid is doing what other powerful lawmakers have done, and that pushing for Nevada's interests is traditional home-state politics.

"I think, philosophically, he likes renewable energy," Washburn said, "and he sees that as a key to the broader climate change agenda. And it's also good politics in the state because there's a growing renewable energy industry out there."

Fighting to kill Yucca Mountain is an easy selling point back home, where Nevadans have long opposed the project. Reid has also campaigned against building new coal-fired power plants in Nevada, pressed the Legislature to close "loopholes" in its aggressive renewable mandates, and urged the state to "realize its renewable energy potential" to create jobs and bolster its economy.

Reid's blend of political power and interest in energy policy will be on full display next month, when Hillary Clinton is due to speak at an annual clean energy summit he's hosting in Las Vegas.

Even in the Senate he leads, though, Reid hasn't always gotten everything he wanted.

Jaczko resigned in 2012 after all four fellow commissioners aired complaints that he had overstepped his powers and berated agency employees and colleagues. Binz's nomination couldn't get through the closely divided energy committee. And earlier this summer, Reid had to accept a nine-month extension of LaFleur's chairmanship of FERC as a price of getting Bay through the same committee.

On the other hand, Reid has had luck blocking people he dislikes.

Former FERC Commissioner John Norris says he lost out on a chance to become chairman last year because Reid considered him too pro-coal — incorrectly, Norris says. Norris told a trade publication that Reid intervened at the White House to stop his appointment, and instead Obama nominated Binz.

Reid's office has denied Norris' version of the events. Norris told POLITICO he stands by his comments.

Norris resigned from FERC last week to take a job with the U.S. Agriculture Department in Rome.

At the NRC, Magwood and former Commissioner George Apostolakis — both Democrats nominated by Obama — also ran afoul of Reid, partly because they either led or joined the chorus of complaints against Jaczko that drew the White House and Congress into the dispute.

Jaczko, Reid's former appropriations director and science adviser, became an NRC commissioner in 2005 thanks to a deal Reid reached after holding up dozens of President George W. Bush's appointees. Obama later elevated him to chairman. As the NRC's leader, Jaczko succeeded in killing the agency's review of the Yucca Mountain project, which Reid had been fighting since he joined the Senate in 1987.

Reid and other Senate Democratic leaders have praised Jaczko as a champion of nuclear safety, accusing his critics of undermining him at the behest of the industry.

People in and around the NRC say the White House decision not to renominate Apostolakis this year had the majority leader's fingerprints all over it. Strikes against Apostolakis include the fact that he joined in the blowup against Jaczko, and that he was a Democrat who recused himself from agency votes on Yucca Mountain. His term expired

June 30.

Meanwhile, Reid has accused Magwood of going back on early assurances that he would oppose Yucca Mountain. Magwood also did "everything he could do to embarrass Greg Jaczko," Reid told The Huffington Post in 2012.

Magwood, who offered some of the more riveting complaints against Jaczko in 2011, is stepping down Sunday to head the Paris-based Nuclear Energy Agency. He has never responded to requests for comment about the insults Reid has leveled against him.

CORRECTION: A previous version of this article incorrectly described the committee with jurisdiction over nominees to the NRC.

Senator BARRASSO. We do need to maintain a full, qualified slate of commissioners who continue to protect our communities by ensuring nuclear safety. This is best achieved by having experienced commissioners who aren't removed and called names on the Senate floor because they don't share the Majority Leader's narrow political agenda.

The Nuclear Regulatory Commission is an important asset to overseeing nuclear power. The Commission can ensure that nuclear energy can continue to be an important part of America's energy mix. It is safe, baseload power that runs 24 hours a day, 7 days a week. Nuclear energy also can make America energy secure and energy independent.

In my home State of Wyoming, uranium is in abundance. If we can continue to develop this resource, we can have a steady supply of domestic fuel stock to power American homes and businesses for years to come.

If we are to have a true, all out, all of the above energy strategy, we must continue with building new nuclear power plants. This is essential to the future of nuclear power in America.

What we cannot do is hamper nuclear power by over regulating the plants that we have running today. We must strike a balance to ensure the safety of our communities while continuing to ensure the viability of nuclear power.

We need to have nominees who will support policies that ensure nuclear safety while allowing nuclear energy to continue to be a vital part of our Nation's energy mix.

Thank you, Madam Chairman. I look forward to the testimony.

Senator BOXER. Thank you, Senator.

Senator Markey.

**OPENING STATEMENT OF HON. EDWARD MARKEY,
U.S. SENATOR FROM THE STATE OF MASSACHUSETTS**

Senator MARKEY. Thank you, Madam Chair. Thank you for calling this very important hearing to consider the nominations of two highly qualified individuals to serve as Nuclear Regulatory commissioners.

I have served on one of the NRC's oversight committees for more than 38 years. Throughout that time, I have seen many fine and dedicated chairmen, commissioners and staff work valiantly to ensure the safety and security of this Nation's nuclear facilities.

While I have often been a critic of many of the agency's actions, throughout most of that time, I have been able to get the answers to the questions as well as the materials which I have needed in order to conduct my oversight and legislative responsibilities.

Regrettably, that changed about 2 years ago after I sent a series of oversight letters requesting information about serious safety allegations brought to my office by whistleblowers. Instead of answering the letters, the Commission altered its policy on how it would communicate with Congress going forward.

It said that individual Senators would no longer be entitled to receive non-public documents from the agency, even if the materials being requested were about a nuclear reactor located in the Senator's State.

I was successful in reversing this misguided decision legislatively. The law now requires the NRC to abide by its old policy but the agency is still refusing to comply with this law and will not respond to many of my information requests about serious safety and security matters.

At the same time, the NRC is also confronted with other serious challenges. It is nowhere near finished implementing the safety measures recommended by its top experts following the Fukushima meltdowns.

It is facing a number of newly decommissioning reactors for the first time in many years and has to address the spent fuel that is filling the spent fuel pools at reactor sites to capacity.

It is increasingly coming under fire for ignoring the safety or security warnings of its own employees who are then retaliated against because they raised the concerns in the first place.

There is nothing more certain to undermine confidence in an agency, and by extension the nuclear power sector as a whole, than this dangerous combination of secrecy, stalling and whistleblower retaliation.

I am very hopeful that the two of you can help the agency restore some of that confidence and I am grateful to you both for agreeing to take on this responsibility. You are both dedicated and qualified professionals with this expertise and experience that a strong regulator needs.

Mr. Baran has worked closely with me and with my staff for years and we have worked on many issues together. For example, we worked together to include the nuclear energy provisions in the Waxman-Markey bill. That passed through the House of Representatives with the endorsement of the Nuclear Energy Institute.

We also worked together on the passage of the Markey-Waxman bill to increase the domestic supply of medical isotopes and the passage of a second bill with Fred Upton through the House where we upgraded the security of our electric grid so that it would not be vulnerable to cyber attack.

In each one of those instances, all of this expertise is directly relevant to the job for which he is sitting here as a nominee. He is a consummate professional, unfailingly knowledgeable and with an uncanny ability to devise a bipartisan compromise when no one believes compromise is possible.

If confirmed, I know he will also have a strong appreciation for what information Congress needs to do its job.

I also want to congratulate you on the birth of your son last Friday. Congratulations. It has been a big week in your family.

Mr. Burns, you have a long and distinguished career at the NRC. You have worked for many chairmen and with many commissioners. You started at the Nuclear Regulatory Commission in 1978, just 3 years after the birth of the agency.

As we all know, the Nuclear Regulatory Commission was created because there was a concern that the Atomic Energy Agency had the responsibility of promoting nuclear power and regulating it simultaneously. It was considered to be an inherent conflict of interest so the NRC had to be created to just focus on the safety agenda.

I think you brought a wealth of information right from the very beginning of this agency serving in a very distinguished way. I con-

gratulate you and I hope you can receive the unanimous support of this committee.

Thank you, Madam Chair.

Senator BOXER. Thank you, Senator.
Senator Fischer?

**OPENING STATEMENT OF HON. DEB FISCHER,
U.S. SENATOR FROM THE STATE OF NEBRASKA**

Senator FISCHER. Thank you, Madam Chair.

I would like to thank the nominees for being here today and for your willingness to serve the public. We appreciate it.

We, unfortunately, were unable to meet ahead of today's hearing so I would like to take this opportunity to share a bit about my home State of Nebraska and our perspective on nuclear energy issues.

Nebraska has the unique distinction of being the only State in the Union where every single home and business receives electric service from publicly owned utilities. We are proud of our 100 percent public power system which delivers affordable and reliable electricity to all Nebraskans.

Our State is fortunate to enjoy electricity costs that are well below the national average thanks in part to nuclear energy. We receive more than a quarter of our State's electricity from two nuclear power plants. Our citizens appreciate access to this clean and affordable energy source.

The continued success of nuclear operations in Nebraska is dependent upon the cooperation of the Nuclear Regulatory Commission.

One of the two nuclear plants in Nebraska, the Omaha Public Power District's Fort Calhoun Nuclear Station, recently sustained an extended outage of 987 days. The plant worked closely with NRC to ensure a safe restart and has been back up and running since December 2013.

Fort Calhoun remains under increased oversight as a part of its restart but is working to return to the standard reactor oversight process at the earliest opportunity. The continued support of NRC to reach this goal as quickly as possible is very important.

We are also hopeful that following a process of more than 7 years, the license renewal for the Crow Butte Uranium Mining Operation will be completed. Also pending before the NRC are license applications for development of tree expansionsites in Nebraska so our nuclear fuel resources can be safely developed for years to come.

The Nuclear Regulatory Commission plays an important role in ensuring the safety and security of our nuclear power and inspiring the public trust and confidence that we have in our system. As the NRC does its work, it is critical that the Commission adheres to its principles of good regulation: independence, openness, efficiency, clarity and reliability.

Now, more than ever, we need an agency that will put these principles into practice from the implementation of new safety enhancements to the review and approval to licensing requests. There is a great deal at stake for the U.S. nuclear industry.

I look forward to continuing our discussion on these issues and again, I offer my gratitude to the nominees for your willingness to serve.

Thank you, Madam Chair.

Senator BOXER. Thank you, Senator.

Now we turn to Mr. Baran for his opening statement.

By the way, we will put your full statement in the record. If you can keep it to 5 minutes, that would be great.

STATEMENT OF JEFFERY M. BARAN, NOMINATED TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION

Mr. BARAN. Thank you, Chairman Boxer and members of the committee, thank you for the opportunity to appear today before the Environment and Public Works Committee.

I am honored to have been nominated by President Obama to serve on the Nuclear Regulatory Commission.

I am deeply grateful to Congressman Waxman for his kind words and support. For more than a decade I have had the privilege of working for one of the most accomplished legislators in our Nation's history. It has been a tremendous opportunity and I appreciate it.

I also want to thank my wife, Michelle, our 3-year old daughter, Mia, and our newborn son, Gus.

It is a pleasure to be here with my fellow nominee, Steve Burns. If confirmed, I look forward to working closely with Steve as well as Chairman Macfarlane and Commissioners Svinicki and Ostendorff.

The Nuclear Regulatory Commission regulates 100 commercial nuclear reactors operating in 31 States. These reactors generate about 20 percent of the electricity in the United States, providing low carbon baseload power.

NRC also oversees dozens of research and test reactors, thousands of nuclear materials licenses and a number of other fuel cycle facilities such as uranium recovery sites, enrichment facilities and fuel fabrication facilities.

NRC has the vital mission of protecting public health and safety, promoting the common defense and security and protecting the environment. That mission has never been more important.

The Commission is implementing lessons learned from the Fukushima accident. Five new reactors are being built while five older reactors are retiring. The Commission is facing a range of other challenging licensing and policy matters.

If confirmed, I would approach the issues before the Commission with an open mind and a collegial attitude. My approach is to hear from all interested parties, understand the facts and then work to find solutions with broad support.

I am proud of my track record of working with my Democratic and Republican colleagues and the Energy and Commerce Committee staff, as well as a range of stakeholders to develop bipartisan legislation that gets enacted into law.

During the last few years, I played a significant role in negotiating bills that have become law with overwhelming bipartisan support, including the Pipeline Safety bill and bills on energy efficiency, hydropower and medical isotopes. I welcome the oppor-

tunity to bring my demonstrated consensus building approach to the Commission.

If confirmed, I believe that my policymaking and legal experience would be an asset to the Commission. On the Energy and Commerce Committee staff, one of my primary areas of responsibility has been oversight of NRC.

I have worked on a range of NRC issues including new reactor licensing, existing reactor oversight and decommissioning, high level waste and low level waste, imports of nuclear material and exports of nuclear technology and uranium mining, milling and enrichment issues.

Over the years, I have had the privilege of being briefed by NRC senior managers and technical staff on numerous occasions. If confirmed, I look forward to continuing to work with these highly skilled professionals, benefiting from their insights and expertise.

After working for Congress for more than a decade, I have a deep respect for the importance and value of congressional oversight. If confirmed, I will do everything I can to ensure that the committee has the information it needs to meet its oversight responsibilities.

Thank you and I look forward to your questions.

[The prepared statement of Mr. Baran follows:]

Statement of Jeffery M. Baran
Committee on Environment and Public Works
September 9, 2014

Chairman Boxer, Ranking Member Vitter, and members of the Committee, thank you for the opportunity to appear today before the Environment and Public Works Committee. I am honored to have been nominated by President Obama to serve on the Nuclear Regulatory Commission.

I want to thank the Senator for his kind introduction. I also want to thank my wife Michelle, our three-year-old daughter Mia, and our newborn son Gus.

It is a pleasure to be here with my fellow nominee, Steve Burns. If confirmed, I look forward to working closely with Steve, as well as Chairman Macfarlane and Commissioners Svinicki and Ostendorff.

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NRC has the vital mission of protecting public health and safety, promoting the common defense and security, and protecting the environment. That mission has never been more important. The Commission is implementing lessons learned from the Fukushima accident. Five new reactors are being built while five older reactors are retiring. And the Commission is facing a range of other challenging licensing and policy matters.

If confirmed, I would approach the issues before the Commission with an open mind and a collegial attitude. My approach is to hear from all interested parties, understand the facts, and then work to find solutions with broad support. I am proud of my track record of working with my Democratic and Republican colleagues on the Energy and Commerce Committee staff, as well as a range of stakeholders, to develop bipartisan legislation that gets enacted into law. During the last few years, I played a significant role in negotiating bills that have become law with overwhelming bipartisan support, including the pipeline safety bill and bills on energy efficiency, hydropower, and medical isotopes. I welcome the opportunity to bring my demonstrated consensus-building approach to the Commission.

If confirmed, I believe that my policymaking and legal experience would be an asset to the Commission. On the Energy and Commerce Committee staff, one of my primary areas of responsibility has been oversight of NRC. I have worked on a range of NRC issues over the years, including new reactor licensing, existing reactor oversight and decommissioning, high-level waste and low-level waste, imports of nuclear material and exports of nuclear technology, and uranium mining, milling, and enrichment issues.

Over the years, I have had the privilege of being briefed by NRC's senior managers and technical staff on numerous occasions. If confirmed, I look forward to continue working with these highly-skilled professionals and benefitting from their insights and expertise.

After working for Congress for more than a decade, I have a deep respect for the importance and value of Congressional oversight. If confirmed, I will do everything I can to ensure that the Committee has the information it needs to meet its oversight responsibilities.

Thank you, and I look forward to your questions.

Environment and Public Works Committee Hearing
September 9, 2014
Follow-Up Questions for Written Submission

Questions for Baran

Questions from:

Senator Barbara Boxer

1. Please indicate whether, in maintaining a public calendar on NRC's website of your meetings and travel:
 - i. You will provide advance public notice of your meetings with outside stakeholders on your calendar in a manner similar to the Consumer Product Safety Commission¹, with the understanding that on occasion the times, attendees and agendas of meetings might change and require revision.
 - ii. You will provide advance public notice of your staff's meetings with outside stakeholders on your calendar in a manner similar to the Consumer Product Safety Commission², with the understanding that on occasion the times, attendees and agendas of meetings might change and require revision.
 - iii. You will keep your public calendar up to date instead of following the practice many Commissioners appear to follow of updating them retrospectively every 1-2 months.
 - iv. You will include meetings between your staff and outside stakeholders on your public calendar.
 - v. The meetings listed on your public calendar will include a description of the meeting agenda.
 - vi. The meetings listed on your public calendar will include a list of attendees.
 - vii. The meetings listed on your public calendar will include meetings that take place outside NRC, including meetings that take place domestically and internationally.

If confirmed, I would strive to maintain a public calendar so that the public is aware of my meetings with outside stakeholders regarding issues pending before the Commission consistent with the scope suggested in your question. I would be guided by an interest in encouraging openness and enhancing transparency.

¹ <http://www.cpsc.gov/en/Newsroom/Public-Calendar/>

² <http://www.cpsc.gov/en/Newsroom/Public-Calendar/>

Questions from:
Senator Cory Booker

1. Many commentators have noted that one of the more promising developments related to the future use of nuclear energy is the work being done by several companies to design and license small modular reactors (SMRs). In my own state, Holtec International was granted \$260 million in tax credits by the New Jersey Economic Development Authority that will be used to bring a 600,000 square foot manufacturing facility and design center to Camden. As I understand it, the promise of SMRs is contingent upon the NRC granting a design certification for this technology that recognizes the many differences between the SMR technology and today's large reactors including requirements that might be applicable for emergency planning, security, and control room staffing among other factors. While the NRC has been in discussion with SMR vendors for a number of years, I further understand that not much progress has been made in the development of a regulatory regime reflecting the many different characteristics of these reactors from either those currently in operation or under construction in Georgia and South Carolina.
 - i. If confirmed by the Senate, can you tell me what priority you will place on the development of appropriate regulatory requirements that will allow SMR technologies to become a viable option for power production both here in the U.S. and in international markets?
 - ii. As a Member of the Commission, will you do your part to ensure that adequate resources are available to the staff that will allow them to address the necessary policy and regulatory issues applicable to the design certification of SMR technologies?

In my view, it is important for NRC to ensure that it has an efficient and effective process for licensing small modular reactors as well as other designs and reactors. NRC should be thinking through any novel issues posed by the SMR design certification applications expected in 2015 and 2016 so that it is prepared to examine them in an expeditious manner.

2. In 2008, 17 applications were submitted to the NRC to build new nuclear plants. A significant number of those applications are still under review by the NRC 6 years later.

If confirmed, what will you do to support and influence the NRC review process to become as efficient as possible?

In my view, it is important for NRC to have an efficient licensing process. If confirmed, I would want to talk with my fellow Commissioners, the NRC staff, and stakeholders to understand if the process can be further improved.

Questions from:

Senator Edward J. Markey

1. NRC's Office of Investigations (NRC OI) was created on April 20, 1982, following the recognition that NRC's wrongdoing investigations had been impeded by NRC personnel in the past. For example, on April 6, 1982 I held a Congressional hearing into a case where NRC officials had altered the conclusions of a safety report that found that a pump company had

falsified and removed records prior to an NRC inspection.¹ The safety report was whitewashed after NRC staff had showed the draft report to a former NRC Chairman who subsequently was hired by the subject of the investigation. In 1985, when the NRC proposed reorganizing the NRC Office of Investigations so that it reported to NRC's Executive Director for Operations rather than directly to the Commissioners, I wrote to the Commission to urge it not to do so out of concern that such a change might lead to investigations again being influenced by others within the agency.

A May 22, 2014 briefing my staff received on an NRC OI investigation into a decommissioning funding status matter related to Exelon has raised concerns that similar problems may exist today. Specifically, I am concerned that Exelon and NRC's Office of General Counsel (NRC OGC) personnel may have inappropriately attempted to interfere with this investigation, that NRC staff who assisted with the investigation were retaliated against, and that the NRC OI lacks the resources and the independence that it needs in order to perform its important mission.

Unlike the NRC IG, NRC OI does not have its own in-house technical staff, but has to 'borrow' subject matter experts from other NRC offices. NRC OI stated at the May 22, 2014 meeting with my staff that there have been instances when their investigative efforts have been adversely impacted because of the inability to obtain independent and dedicated access to technical expertise. The technical expert present at the May 22, 2014 meeting stated that they had been retaliated against by their own management as a result of the work they had performed in support of the NRC OI investigation. It is also apparent to me that the reliance by NRC OI on 'borrowed' NRC staff from other NRC program offices could cause a conflict of interest in the event that NRC OI is investigating licensee wrongdoing that may have been inadvertently enabled or improperly authorized by the NRC program office with supervisory authority over the borrowed technical staff.

Unlike the NRC IG, NRC OI does not have its own in-house legal staff, despite a pending 2012 request made by the Director of OI to receive a dedicated counsel. Since NRC OGC reports directly to the Commission and NRC OI reports to the NRC Executive Director for Operations, NRC OI is also not able to equitably assert its views or obtain independent legal advice.

- i. Will you work to ensure that NRC OI has the dedicated technical and legal resources that it needs to conduct the independent investigations it was set up to conduct?
- ii. Will you also work to ensure that there is an effective way for it to communicate directly with the Commission as it was originally set up to do?

In my view, the Office of Investigations plays an important role at NRC. If confirmed, I would want to examine the resources available to the office, hear from NRC staff, and talk with my fellow Commissioners before forming an opinion about the adequacy of the office's resources. I would work to ensure that there is an effective way for the Office of Investigations to communicate directly with the Commission.

2. Questions on Foreign Ownership

The text of the Atomic Energy Act of 1954, the Act which governs the NRC and nuclear energy more broadly – contains a firm restriction on the issuance of nuclear power plant licenses to foreign entities. According to Section 103 of the Act,

¹ <http://www.nytimes.com/1982/04/06/us/atomic-unit-revised-report-after-review-by-company.html>

No license under this section may be given to any person or activities which are not under or within the jurisdiction of the United States No license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.²

On June 3, 2013, the NRC requested written public comment on its regulatory requirements “related to foreign ownership, control, or domination of commercial nuclear power plants.” In particular, the NRC requested comments about “foreign ownership, control or domination issues up to and including 10 percent indirect foreign ownership; criteria for assessing proposed plans or actions to negate direct or indirect foreign ownership or foreign financing of more than 50 percent but less than 100 percent,” and “the availability of alternative methods such as license conditions for resolving” foreign ownership, control, or domination issues.³ The Federal Register notice indicates that this request for comment on foreign ownership regulations originally arose from a request for a license for a particular plant,⁴ specifically, from the Commission’s decision against granting a nuclear license for the Calvert Cliffs Nuclear Power Plant to an entity that was 85% owned by the government of France.⁵

On September 8, 2014 NRC staff sent an options paper to the NRC that included some potential recommendations for loosening the statutory prohibition on foreign ownership of nuclear reactors via regulation. Two separate non-concurring opinions signed by a total of 10 NRC staff, including very senior NRC managers, accompanied this options paper (but were not made public). These opinions raised serious national security concerns associated with the proposals.

- i. Do you agree that each Commissioner should look especially closely at any policy paper that is accompanied by such a large number of non-concurring views written by NRC’s top experts on the subject matter when considering how to vote?

In my view, all staff policy papers should be thoughtfully reviewed.

- ii. In the past year, my office has heard from an increasing number of whistleblowers from many different offices at NRC. At a recent EPW hearing, I released portions of a report written by the NRC that actually surveyed those who have attempted to use NRC’s non-concurrence process for resolving policy disagreements. A staggering 75% of those who used the process said they received a poor performance appraisal after they raised their concerns. Almost two thirds of them said they were excluded from work activities by their management. 25 percent were passed over for promotions, and 25 percent were even verbally abused by their colleagues and their supervisors. Do you agree that the 10 people who bravely chose not to concur with the foreign ownership policy paper should not experience any retaliation for doing so?

² Atomic Energy Act of 1954 (as amended), codified in the United States Code at 42 U.S.C. § 2133, available at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0980/v1/sr0980v1.pdf#page=13>.

³ 78 Fed. Reg. 33122, June 3, 2013.

⁴ *Id.*

⁵ See Notice of Issuance of Determination Letter, In the Matter of Calvert Cliffs 3 Nuclear Projects, LLC, and Unistar Nuclear Operating Services, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), Docket No. 52-016, April 8, 2011, at page 2, available at <http://www.nirs.org/nukerelapse/calvert/NRCforeign determinationletter.pdf>.

Yes.

iii. Do you also agree that all NRC employees should feel free to raise concerns or disagree?

Yes.

Questions from:

Senator David Vitter

1. Since January 1, 2014 have you discussed the proposed repository for spent fuel at Yucca Mountain with Senator Harry Reid, anyone who works for or is associated with Senator Reid, any other elected official, anyone from the Obama Administration? Tell me about those discussions. Have you at any time entered into any agreements or made any commitments with respect to Yucca Mountain - formal, informal or implied? Do you consider Yucca Mountain "unworkable" as a geologic repository for spent nuclear fuel and high level radioactive waste? Please explain.

Since January 1, 2014, I have not discussed Yucca Mountain with Sen. Reid, his staff, or anyone from the Administration. I have not entered into any agreements or made any commitments with respect to this issue.

2. The NRC's budget and staffing have dramatically increased over the last decade. During that period, the agency's budget has doubled and staffing has increased by about 1000 employees. This has come at a time when the number of operating reactors has dropped by about 10%, the number of material licensees has decreased even more significantly, and the number of new plants being constructed is very limited and far below the projections. What are your perspectives on this matter and what would you do to address it?

I understand that NRC staff is taking a close look at the next five years to ensure that workload and resources are appropriately aligned. I think that review is valuable, and if confirmed, I would look forward to reviewing the staff's recommendations.

3. The NRC has been accused by the nuclear industry and other stakeholders of over-regulation – imposing unnecessary, costly, and burdensome regulations on the industry that have little or no safety benefit. Many stakeholders believe that this unnecessary regulatory burden is a primary factor in the premature retirement of several reactors in the last year and the financial challenges threatening the future of many nuclear plants today. In response, the industry has an effort ongoing to address cumulative regulatory burden and drive NRC regulatory reform.

Mr. Baran: You have served on the staff of the House Energy and Commerce Committee, a committee that oversees the NRC. What are your views on this matter?

In my view, NRC's role is to ensure nuclear safety in a thoughtful way. NRC has regulatory mechanisms to ensure that the costs and benefits of regulatory requirements are appropriately considered. In addition, NRC has an effort underway to examine the cumulative effects of regulation.

4. It has been the NRC's practice and policy to approve changes in Security and Emergency Planning requirements at nuclear plants when they transition from operating plant to plants being decommissioned. Clearly, the NRC has done so based on sound science and the fact that plants undergoing decommissioning pose little radiological risk to the public. Some of my colleagues are now putting pressure on the NRC to impose the same Security and Emergency Planning requirements on decommissioning plants as they do on operating reactors. What are your views on that matter?

Right now, these exemption decisions are made on a case-by-case basis without public comment. If confirmed, I would want to explore whether a rulemaking could address some

of these issues in a more comprehensive way. That approach would allow the Commission to hear from stakeholders and the public about these exemptions.

5. Mr. Baran, you and Mr. Burns have been nominated to replace former Commissioners Apostolakis and Magwood on the Nuclear Regulatory Commission. Dr. Apostolakis is one of the world's most renowned experts on risk assessment, a fellow of the American Nuclear Society, a past chairman of the Advisory Committee on Reactor Safeguards, and a widely respected academic. Mr. Magwood is a distinguished nuclear professional with experience in private industry and government, including extensive management experience directing the country's nuclear technology program at the Department of Energy. Given your background as a lawyer and a congressional staffer with scant involvement in nuclear matters, what qualifications would you bring to the job? Why should I vote to confirm you as Commissioner?

On the Energy and Commerce Committee staff, one of my primary areas of responsibility has been oversight of NRC. Before I joined the Energy and Commerce staff, I worked on nuclear issues on the Oversight Committee staff. I have a solid understanding of the agency and the issues before it. My policymaking and legal experience have prepared me for this role, which is primarily a policymaking, rulemaking, and adjudicatory position.

I have worked on a range of NRC issues over the years, including new reactor licensing and existing reactor oversight, high-level waste and low-level waste, imports of nuclear material and exports of nuclear technology. I have worked on uranium mining and milling issues and also enrichment. I also have worked on implementation of lessons learned from Fukushima, medical isotopes, and, more recently, decommissioning issues. I have substantial experience with a broad range of NRC policies.

I have a collegial and open-minded approach. And I have a long track record of working with the Republican committee staff to develop bipartisan legislation that gets enacted into law. In just the last few years, I played an important role in negotiating bills that have become law with overwhelming bipartisan support, including the pipeline safety bill and bills on energy efficiency, hydropower, and medical isotopes.

6. Mr. Baran, do you think nuclear power plants are being operated safely in the United States today? Do you think nuclear power has a role in America's energy future as a reliable, emissions-free generator of base load electricity?

It is NRC's mission to ensure that nuclear plants are operated safely and I am committed to that vital mission. NRC's role is to be a nuclear safety regulator, not a promoter of nuclear power. I would observe though that nuclear plants generate low-carbon, baseload power that is currently about 20% of the U.S. electricity mix.

7. Mr. Baran, should a commissioner include consideration of policy matters when making regulatory decisions? How would you handle a situation in which you were asked to approve a licensing action that complied with all the applicable regulatory requirements but you believe approving it is not the best course of action for the NRC or for the United States in general from a policy perspective? If a facility meets all NRC safety requirements would you be willing to vote to issue a license to it, even if you felt the facility should not be granted a license due to policy or other considerations?

If confirmed, I would evaluate each licensing application on the merits and apply the relevant statutory and regulatory requirements.

8. In granting a license to a waste disposal facility, should it matter whether or not the people in the vicinity of the facility favor or oppose it? To your knowledge, does the community closest to Yucca Mountain favor or oppose the proposed repository?

If confirmed, I would evaluate each licensing application on the merits and apply the relevant statutory and regulatory requirements. The Commission's decisions should be informed by the staff's technical expertise as well as robust public comment. With respect to Yucca Mountain, my understanding is that Nye County has expressed support for the project and the State of Nevada has expressed opposition.

9. I introduced S. 1519 to reform some of the NRC's statutory authorities, including the chairman's use of emergency authority which usurps the authority of the full commission. A companion bill, H.R. 3132, was introduced in the House by Congressman Lee Terry. The Energy and commerce Committee held a hearing on that bill in December of last year.

Did you staff that hearing?

Yes, I worked on that hearing with other members of the Committee staff.

10. I understand that the democratic members were highly critical of the requirement for the NRC chairman to notify Congress within 24 hours of a decision to exercise emergency authority.

Are you familiar with the NRC's emergency response procedures for the Operations Center?

I do not recall whether I previously reviewed that specific document. If confirmed, I would ensure that I am familiar with the procedures.

11. The procedures explain that if an emergency required activation of the Operations Center, the NRC chairman – or a designee – would be the Executive Team Director. These procedures list the Executive Team Director's actions (bottom of page 11, section 3.4.2):

- *Report to the Operations Center;*
- *Receive an initial briefing;*
- *Review and approve a situation report and press releases; and*
- *Ensure other commissioners are kept informed.*

If the chairman's first order of business after getting briefed is to review situation reports and press releases, do you believe it is simply too burdensome to notify Congress within 24 hours of any decision to exercise emergency authority?

I do not believe there would be an obstacle to notifying Congress within 24 hours of a decision to exercise emergency authority. In fact, a provision in last year's appropriations bill requires notification to Congress.

12. I also note in these procedures that Congressional Affairs is part of the Liaison Team present in the Operation Center. I'm guessing the role of Congressional Affairs in this situation is to communicate with Congress in the event of an emergency.

Do you have any reason to believe that the Congressional Affairs Office would be unable to notify Congress in the event the chairman exercised emergency authority?

No.

13. Please list all nuclear power plants that you have visited along with the date of the visit and a brief description of the nature of the visit and meetings that occurred there.

On June 20, 2014, I visited the Calvert Cliffs power plant. I toured the facility and received a briefing from the licensee's staff.

14. Please list all entities with an interest in nuclear power or nuclear safety with whom you have met since April 1, 2014 along with the date of any such meeting and a brief description of the nature of the meeting. For this question, please include all nuclear power companies, associations, environmental organizations, or other entities with an interest in nuclear power or nuclear safety.

Excluding meetings with Members of Congress or their staff:

May 1, 2014 – NRC staff on Northeast Church Rock site
 May 7, 2014 – NRC budget hearing
 May 22, 2014 – Meeting with 6 agencies and two tribes about efforts to clean up uranium contamination in and around the Navajo Nation
 June 4, 2014 – EPA staff on efforts to clean up uranium contamination
 June 20, 2014 – Tour of Calvert Cliffs
 July 7, 2014 – Meeting with Monty Humble and his colleague on consolidated interim storage
 July 15, 2014 – SoCal Edison regarding SONGS decommissioning
 August 5, 2014 – NRC staff briefing on a range on topics

15. Please provide a list of all organizations (with an interest in law, policy, energy or environmental issues, nuclear power, nuclear waste, nuclear safety, or related matters) of which you are or have been a member.

To the best of my recollection: District of Columbia bar, Illinois bar, U.S. Supreme Court bar, Harvard Environmental Law Society, Harvard Environmental Law Review.

16. Please explain whether and how your background and prior experiences have prepared you to take on this important task of serving on the Nuclear Regulatory Commission.

On the Energy and Commerce Committee staff, one of my primary areas of responsibility has been oversight of NRC. Before I joined the Energy and Commerce staff, I worked on nuclear issues on the Oversight Committee staff. I have a solid understanding of the agency and the issues before it. My policymaking and legal experience have prepared me for this role, which is primarily a policymaking, rulemaking, and adjudicatory position.

I have worked on a range of NRC issues over the years, including new reactor licensing and existing reactor oversight, high-level waste and low-level waste, imports of nuclear material and exports of nuclear technology. I have worked on uranium mining and milling issues and also enrichment. I also have worked on implementation of lessons learned from Fukushima, medical isotopes, and, more recently, decommissioning issues. I have substantial experience with a broad range of NRC policies.

I have a collegial and open-minded approach. And I have a long track record of working with the Republican committee staff to develop bipartisan legislation that gets enacted into law. In just the last few years, I played an important role in negotiating bills that have become law with overwhelming bipartisan support, including the pipeline safety bill and bills on energy efficiency, hydropower, and medical isotopes.

17. It appears that you will be the least experienced person ever to serve on the NRC. Do you disagree? If so, please explain.

I have tremendous respect for the breadth and depth of experience of the current and former NRC Commissioners, but I respectfully disagree with the above statement. As described in the response to the previous question, I would bring substantial policymaking and legal experience to the position.

18. During NRC Chairman Macfarlane's confirmation process, she was asked by Sen. Vitter: "Do you think an NRC Commissioner should have strong technical expertise relevant to the NRC's mission to protect the public health and safety and be knowledgeable about the nuclear industry it regulates?" Chairman Macfarlane responded: "Yes, an NRC Commissioner would be well served to have a technical background." Do you believe you have the requisite "technical background" referenced by Chairman Macfarlane?

I think it is valuable for Commissioners to have a diversity of experience. While I do not have a technical background, I would bring policymaking and legal experience to the Commission. Every Commissioner, even those with a technical background, relies on the technical expertise of the career NRC staff. That will be true for me as well.

19. Rep. Henry Waxman recently stated that you are "extremely knowledgeable about the NRC and its important responsibilities." Please describe any nuclear-related issues and matters you have been substantially involved in during your employment relationship with Rep. Waxman and/or committees of Congress on which he served.

I have worked on a range of NRC issues over the years, including new reactor licensing and existing reactor oversight, high-level waste and low-level waste, imports of nuclear material and exports of nuclear technology. I have worked on uranium mining and milling issues and also enrichment. I also have worked on implementation of lessons learned from Fukushima, medical isotopes, and, more recently, decommissioning issues. I have substantial experience with a broad range of NRC policies.

20. Please identify and briefly describe any private sector roles or positions you have held where nuclear power or nuclear safety issues were substantially relevant.

I have not held such private sector positions.

21. Please identify the person or persons who has most significantly shaped and informed your views on nuclear power and nuclear safety.

Over the years, I have met with and learned from numerous agency officials, stakeholders, and experts.

22. Please identify those books you have read or studied extensively on the topic of nuclear power or nuclear safety.

Over the years, I have read numerous books and reports on nuclear safety, nuclear waste, medical isotopes, and uranium mining, milling, and enrichment.

23. The first of the NRC's five Principles of Good Regulation is "Independence."

- i. What does this principle mean to you, and how would it impact your role and actions as a commissioner?

If confirmed, I will be an independent professional, exercise my best judgment in carrying out my duties, and work hard to ensure that NRC decisions are fact-based and unbiased.

- ii. Do you commit to zealously guard the independence of the NRC and oppose any efforts to undermine it?

If confirmed, I commit to guarding the independence of the NRC and working hard to ensure that NRC decisions are fact-based and unbiased.

- iii. Would you agree that the Commission should not allow political meddling from Congress or other parts of the executive branch to interfere with the NRC's independent decision-making processes?

Yes.

24. The NRC's Principles of Good Regulation include "Reliability," and state that "Once established, regulation should be perceived to be reliable and not unjustifiably in a state of transition." Do you agree that the Commission, and each Commissioner, has a responsibility to ensure that the NRC maintains an appropriate degree of regulatory reliability and stability?

Yes.

25. The NRC has established rules, policies, and guidelines governing the release of NRC-related information. Do you agree to abide by those rules, policies and guidelines? Do you agree to not release NRC documents or information to third parties (including the media, members of Congress or their staff, environmental groups, or other entities) except as otherwise required by law and NRC rules, policies, and guidelines?

One of NRC's Principles of Good Regulation is openness. If confirmed, I would abide by any applicable requirements while endeavoring to enhance transparency.

26. The New York Times reported on April 8, 2013, that the former Chairman, Gregory Jaczko, suggested that all 104 U.S. nuclear reactors should be phased-out and replaced. The article states: "All 104 nuclear power reactors now in operation in the United States have a safety problem that cannot be fixed and they should be replaced with newer technology, the former chairman of the Nuclear Regulatory Commission said on Monday. Shutting them all down at once is not practical, he said, but he supports phasing them out rather than trying to extend their lives."

- i. Do you agree with Dr. Jaczko's view, as described in that article?
- ii.

I do not have the benefit of knowing the context of the above statement, but I am not aware of information supporting the above quotation.

iii. Have you met with, or spoken to, Dr. Jaczko since January 1, 2014? If so, please provide the date of any such conversations and describe the nature of those conversations.

No.

27. In an April 29, 2013, article in the *Air Conditioning, Heating & Refrigeration News* (Vol. 248, Issue 17), you were quoted as saying: "We primarily look at energy efficiency through the eyes of climate change" and that energy efficiency is "an essential part of any serious effort to address climate change, and it's the low-hanging fruit that reduces pollution while saving people money." You said climate change is "a threat that is not going away," and that "the window for effective action on climate change is closing." Similarly, President Obama recently stated that, to "meet our growing energy needs and prevent the worst consequences of climate change, we need to increase our supply of nuclear power..." He also stated that the nation should be "building a new generation of safe, clean nuclear power plants in this country." Likewise, Energy Secretary Moniz stated that the "construction of new nuclear power facilities ... [is] an important part of our all-of-the-above approach to American energy as we move toward a low-carbon energy future."

i. Do you agree with President Obama and Secretary Moniz that nuclear power should play an important role in the nation's electric generation mix?

NRC's role is to be a nuclear safety regulator, not to set general energy policy. I would observe though that nuclear plants generate low-carbon, baseload power that is currently about 20% of the U.S. electricity mix.

ii. Even regardless of concerns related to climate change, do you believe nuclear energy should play an important role in providing electric generation for the nation?

NRC's role is to be a nuclear safety regulator, not to set general energy policy. I would observe though that nuclear plants generate low-carbon, baseload power that is currently about 20% of the U.S. electricity mix.

28. Do you agree that the United States is the "gold standard" for nuclear safety regulation in the world?

I have heard that view expressed on a number of occasions. If confirmed, I would work to ensure that NRC is always striving to uphold the highest standards for nuclear safety.

29. Some have expressed concerns about the role of state and local governments in the NRC licensing and regulatory processes.

i. Please explain whether, in your view, federal law preempts state laws regarding nuclear safety and the licensing and decommissioning of nuclear power plants.

As a general matter, federal law charges NRC with ensuring radiological safety.

ii. Please explain whether, in your view, the current NRC regulations provide an adequate opportunity for state and local involvement in the licensing and decommissioning processes.

With several plants retiring, I think it may make sense to take a fresh look at some decommissioning issues. If confirmed, I would want to hear from NRC staff, states, and other stakeholders about whether the current level of public participation is sufficient and then discuss those issues with my fellow Commissioners.

30. Do you agree that the NRC's existing regulations governing decommissioning of nuclear reactors are adequate? If not, please explain.

With several plants retiring, I think it may make sense to take a fresh look at some decommissioning issues.

31. Please list all public speeches or presentations you have made concerning nuclear energy, nuclear safety, spent nuclear fuel/nuclear waste, Yucca Mountain, or other issues of relevance to the work of the NRC, and please provide copies (written, audio, or video) of any such speeches or presentations.

I spoke on a panel at a National Black Caucus of State Legislators event in December 2012. I believe I spoke from informal notes and am not aware of any audio or video of my remarks.

32. You gave a presentation at the Energy Storage Conference in June 2014, although your actual remarks are not available publicly. Please provide a copy of your presentation and a transcript.

It was a question and answer session on a panel without a formal presentation. I do not have a transcript of the event.

33. Your alma mater, Ohio University, has a website that quotes you as stating: "The MA program helped me to recognize that a career in public interest environmental law was for me. The program gave me a solid preparation for law school, and put me in a position to attend Harvard. My professors and courses examined the environmental issues about which I was concerned in a variety of contexts, including domestic politics, international relations, and the realm of social movements, and from a number of perspectives, including *those critical of current economic and political systems*." What perspectives critical of current economic and political systems were you referring to? Would you describe your own legal or policy viewpoints as being critical in any way of current economic and political systems in the United States? If so, please explain.

I do not recall the specific context of this statement but I presume I was referring to political theories presented in courses I took. I do not have legal or policy viewpoints critical of our basic economic and political systems.

34. As a nominee for a position in the Executive Branch, has the President informed you of the important role you will play, under our Constitution, to ensure that all laws are faithfully executed?

I have not had a conversation with the President but I am aware of this important responsibility.

35. A "trail guide" document by Harvard Law School explains that you "worked as an intern in NRDC's Washington, D.C. office during the summer of 2000" where you "worked on a case challenging the EPA's issuance of a pollutant discharge permit under the Clean Water Act in connection with timbering in the Tongass National Forest, as well as Alaska's approval of that permit." The NRDC is critical of nuclear power.

- i. Do you agree with most policy views and actions of the NRDC?
- ii.

I am not familiar with all of NRDC's views and actions. Like any organization, it likely has views with which I would agree and views with which I would disagree.

- iii. Are you a member of the NRDC?

No.

- iv. Do you agree with NRDC's views on nuclear power? Please explain.

I am not familiar with all of NRDC's views on nuclear power. Like any organization, it likely has views with which I would agree and views with which I would disagree.

- v. During your time working as an intern for the NRDC, did you provide assistance on any nuclear-related projects or issues? If so, please explain.

No.

36. CNN recently aired a documentary entitled, *Pandora's Promise*, which discusses the importance of nuclear power.

- i. Have you watched this documentary?

No.

- ii. In the promotional materials for the documentary, CNN states: "[S]cience and experience suggest that long-held fears about nuclear power may be wrong. Through the intensely personal stories of environmental thinkers, 'CNN Films: Pandora's Promise' reveals a rift within the environmental movement as they describe their individual journeys of 'defection,' in the debate over how to manage climate change." Do you agree that there is a rift among environmental groups about the role nuclear power should play in the U.S.? Please explain your own view of the role that nuclear power should play in the U.S.

I do not have sufficient information to answer the first question. If confirmed, my focus would be on ensuring nuclear safety in a balanced and thoughtful way. The Commission does not set general energy policy. I would observe though that nuclear plants generate low-carbon, baseload power that is currently about 20% of the U.S. electricity mix.

- iii. Do you agree that "science and experience suggest that long-held fears [among some groups] about nuclear power may be wrong"? Please explain.

I have not watched the documentary and do not know the context of this quotation.

37. Under the Nuclear Waste Policy Act, Yucca Mountain is the site designated for the nation's geologic repository. Do you agree or disagree? Please explain.

I agree. NRC is required to follow the law, which is currently the Nuclear Waste Policy Act.

38. The D.C. Circuit ultimately ordered the NRC to move forward with the Yucca license process. Citing the June 2011 report by the NRC OIG, Judge Raymond Randolph of the D.C. Circuit described Chairman Jaczko's actions in the following manner: "Although the Commission had a duty to act on the application and the means to fulfill that duty, former Chairman Gregory Jaczko orchestrated a systematic campaign of noncompliance. Jaczko unilaterally ordered Commission staff to terminate the review process in October 2010; instructed staff to remove key findings from reports evaluating the Yucca Mountain site; and ignored the will of his fellow Commissioners." *In re: Aiken County*, 725 F.3d 255, 267 (D.C. Cir. 2013) (Randolph, J., concurring).

i. Do you agree or disagree with Judge Randolph's characterization of Chairman Jaczko's actions? Please explain.

I was not at the agency at that time and have no personal first-hand knowledge of the events.

ii. In light of the court's mandate that the NRC must proceed with the Yucca license review process, would you, as a commissioner, support NRC efforts to request necessary funds for that purpose from Congress? Please explain.

I do not want to pre-judge the issue. If confirmed, I would want to talk with my fellow Commissioners and hear from the NRC staff before expressing a view.

iii. Would you support NRC efforts to encourage the President's budget request to include funding for the Yucca license review process? Please explain.

I do not want to pre-judge the issue. If confirmed, I would want to talk with my fellow Commissioners and hear from the NRC staff before expressing a view.

39. A report by the House Oversight Committee in December 2011 found: "The Chairman's actions with respect to Yucca Mountain...eroded the trust of his colleagues on the Commission." Do you agree? Please explain.

I have no personal first-hand knowledge of the events and did not participate in the Oversight Committee investigation.

40. Citing the June 6, 2011 report by the OIG, the House Oversight Committee report noted that "the Chairman strategically shared varying levels of information with his colleagues in an effort to secure support for the language in the C.R. Memorandum." Was Chairman Jaczko acting within the letter and spirit of the governing NRC laws, regulations, and policies when he acted in this manner? Please explain.

I have no personal first-hand knowledge of the events and did not participate in the Oversight Committee investigation. As a general matter, I think it is important for Commissioners to receive the information they need to perform their functions.

41. In October of 2011, Commissioners Magwood, Apostolakis, Svinicki, and Ostendorff wrote a letter to the President's chief of staff, stating that the "actions and behavior [of Chairman Jaczko] are causing serious damage to this institution and are creating a chilled work environment at the NRC." If you were a commissioner in October 2011, do you believe you would have also co-signed that letter under those circumstances?

I was not at the agency at that time and have no personal first-hand knowledge of the events.

42. The June 2011 OIG report suggests that Chairman Jaczko intentionally delayed casting his vote on NRC actions related to Yucca-related issues. Please explain your understanding of NRC expectations and practices concerning timely votes by commissioners, and explain whether you would endeavor to vote on matters in a timely manner.

Voting procedures and practices are described in chapter III of the Internal Commission Procedures. If confirmed, I would adhere to these procedures and endeavor to vote on matters in a timely manner.

43. The June 2011 OIG report found that Chairman Jaczko's efforts to block the other Commissioners from receiving drafts of a report, which contained the views of the NRC's Executive Director of Operations, were "inconsistent with the Commissioners' expectations to receive the staff's written views, analysis and recommendations...." The OIG also explained that the "legislative history of the Reorganization Plan establishes that the Commissioners are to have full access to agency information to support their policy decision-making and that the Chairman is not to block the flow of information to the Commissioners."

i. Please explain your view of the legal authority of the NRC chairman to manage and control the flow of information to other members of the Commission.

The NRC Chairman is responsible for ensuring that the Commission is fully and currently informed of matters within its functions.

ii. Do you believe Chairman Jaczko acted inappropriately when he sought to edit, revise, or otherwise control communications from NRC staff to the commissioners? Please explain.

I was not at the agency at that time and have no personal first-hand knowledge of the events. As a general matter, I think it is important for Commissioners to receive the information they need to perform their functions.

44. Have you read the Blue Ribbon Commission Report on America's Nuclear Future issued in January 2012? If so, please explain whether you agree with the recommendations in the report.

Yes, I found the report informative and thoughtful but have not formed firm opinions on each of the recommendations.

45. Please describe your understanding of the NRC's backfit rule and its role in NRC licensing and regulatory functions.

In brief, under the backfit rule, as I understand it, unless a required modification to an existing facility is necessary for adequate protection, the benefits of the required modification must exceed the costs.

46. Are you familiar with the NRC guidance to staff on the use of Probabilistic Risk Assessment (PRA)? What is your view of PRA and how it should be used in NRC licensing and regulatory functions?

I have not yet reviewed the guidance. If confirmed, I would want review the guidance, hear from NRC staff, and discuss the issue with my fellow Commissioners before expressing a view.

47. The NRC is considering ways to address the cumulative effects of regulations. Please explain whether you believe there are legitimate concerns regarding the cumulative effects of NRC rules, orders, and other agency directives and actions on licensees. Please explain your view of how the NRC should evaluate and address these cumulative effects.

My understanding is that NRC staff has held a number of public meetings to examine this issue. If confirmed, I look forward to reviewing the staff's analysis when it is submitted next spring.

48. On April 24, 2014, the Commission voted on a policy paper by NRC staff pertaining to financial assurance requirements for merchant plants. Do you agree or disagree with the Commission's determination in that matter?

I have not reviewed the votes on that policy paper and would reserve judgment until I have done so.

49. Following the Fukushima disaster in Japan, the NRC embarked upon a multi-tiered approach to addressing the recommendations of the NRC's Near Term Task Force. Do you agree with the NRC's current approach to post-Fukushima reviews and regulatory changes? If not, please explain.

I think it is important for post-Fukushima lessons learned to be implemented expeditiously. In my view, the Commission should be closely monitoring the implementation process and looking for opportunities to accelerate progress. The Commission should also ensure that the regulatory process is thoughtful and provides an opportunity for public participation.

50. On May 19, 2014, the Commission acted on an NRC staff recommendation regarding three specific recommendations arising out of the Near-Term Task Force Report's suggestion to review whether the NRC should establish a "logical, systematic, and coherent regulatory framework for adequate protection that appropriately balances defense-in depth and risk considerations." The three staff recommendations were approved by the Commission even though the NRC staff also acknowledged that these changes "are not needed to maintain safety of nuclear power reactors."

i. Do you agree with the action taken by the Commission in this vote?

I have not reviewed this vote and would reserve judgment until I have done so.

ii. Do you believe that the NRC should impose costly new requirements for nuclear reactors even if the new requirements cannot be shown to enhance safety to a measurable degree?

If confirmed, I would evaluate each such issue on the merits and would want to hear from stakeholders and the NRC staff and discuss the issue with my fellow Commissioners.

iii. In her vote on this matter, Commissioner Svinicki notes that NRC cost estimates associated with new requirements have "understated reality by orders of magnitude." Do you believe it is important that NRC estimates of the costs on industry associated with implementation of new requirements are accurate? If so, what efforts do you believe may be necessary to ensure more accurate cost estimates?

Yes, I believe that cost and benefit estimates should be accurate. If confirmed, I would want to hear from stakeholders and the NRC staff and discuss the issue with my fellow Commissioners.

51. In a recent vote by the NRC on filtered vents, Commissioner Magwood expressed concerns with approaches to regulation that rely upon *qualitative* (as opposed to *quantitative*) factors. He described such an approach as an "extraordinary step" that "goes well beyond previous [NRC] guidance..." He also noted that Chairman Macfarlane's analysis in that vote could be used to "justify essentially any regulatory change." What is your view of the proper use of qualitative factors in regulatory decision-making by the NRC?

In my view, it is generally appropriate to thoughtfully consider both quantitative and qualitative factors when analyzing the costs and benefits of a proposed regulatory action.

52. Public notice and comment, which provides full involvement for all stakeholders, is a critical component of good governance at any agency, but especially the NRC which has to deal with such highly complex and technical issues. Under what circumstances should the NRC forego rulemaking in favor of a direct order?

I agree that rulemakings generally provide for more robust public participation. If confirmed, for any specific order being considered by the Commission, I would want to hear from NRC staff and discuss the issue with my fellow Commissioners before determining whether the order was the appropriate mechanism to protect public health and safety. After 9-11 and Fukushima, orders were issued to ensure prompt action and later superseded by subsequent rulemakings.

53. NRC is establishing procedures to govern hearings on potential claims that acceptance criteria (part of the inspections, tests, analyses, and acceptance criteria, or "ITAAC") in the combined license for a nuclear reactor have not or will not be met. *See* 70 Fed. Reg. 21,958 (April 18, 2014). The comment period for the proposed procedures ended on July 2, 2014. These procedures will be critical to enabling the start-up of new reactors.

i. Do you agree that it is important to review stakeholder input when finalizing these procedures?

Yes.

ii. Do you also agree that it is important to finalize these procedures in a timely manner?

Yes.

iii. To avoid unreasonable delays in the hearing process, stakeholders have suggested ways to ensure that "claims of incompleteness" and other relevant components of the hearing process are appropriately addressed. For example, it has been suggested that the final hearing procedures should specify the kinds of information that will be needed in order to assess whether an ITAAC closure notification (or uncompleted ITAAC notification) is incomplete. This is important to ensure that licensees and other stakeholders are able to assess whether "claims of incompleteness" are potentially valid or are appropriate for agreed-to resolution outside the hearing process. Do you agree that it is important to ensure that the ITAAC hearing procedures are workable and efficient?

Yes.

54. The *NRC Reorganization Plan Codification and Complements Act* (H.R. 3132 by Rep. Lee Terry; S. 1519 by Sen. David Vitter) is legislation to improve the functioning of the NRC. This

legislation would, among other things, clarify the authority of the chairman in emergency situations and ensure equal access to information for all NRC members.

- i. Please describe whether you agree or disagree with the key elements of this legislation.

The appropriations language passed last year makes it clear that the Chairman must notify the Commissioners and Congress if emergency authorities are used. I think that it a reasonable requirement that will ensure there is no confusion about whether those authorities are being invoked.

- ii. In light of the difficulties experienced during the tenure of Chairman Jaczko, as described in the 2011 OIG Report and House Oversight Committee reports, do you agree that legislation clarifying the functions, powers, and responsibilities of the chairman and the commissioners would be beneficial?

In my opinion, Chairman Macfarlane and the Commission have done a good job of rebuilding the collegiality and communication that is so important to the effective functioning of the Commission. The appropriations language passed last year makes it clear that the Chairman must notify the Commissioners and Congress if emergency authorities are used. I think that it a reasonable requirement that will ensure there is no confusion about whether those authorities are being invoked. Therefore, I do not believe that legislation is needed at this time.

55. The official website of the minority members of the House Energy & Commerce Committee contains a critique of H.R. 3132, asserting that it "erodes the Chairman's authority in a nuclear emergency" and includes other "unnecessary or potentially counterproductive changes to NRC procedures that could undermine the current collegiality among the Commissioners." What role, if any, did you have in drafting or approving this critique of H.R. 3132? Please explain.

I was part of a team of Committee staff that prepared materials to reflect Rep. Waxman's views about the legislation.

56. At a hearing on this legislation on December 12, 2013, Rep. Waxman called this legislation a "really bad idea." He also argued that it is a "terrible idea" to require the NRC Chairman to notify the other commissioners and Congress before exercising emergency powers. Specifically, Rep. Waxman claimed that this "bill even prevents the Chairman from taking any emergency actions until she notifies the four commissioners, two congressional committees, and the general public that she has declared an emergency." Yet this is misleading. H.R. 3132 does not prevent the chairman from acting in that context; rather, it simply requires such notification to occur "not later than 24 hours after" the chairman declares a specific emergency exists. In other words, the bill does not prevent the chairman from taking immediate action in a real emergency.

- i. What role, if any, did you have in drafting or approving this portion of Rep. Waxman's opening statement? Please explain.

This was Rep. Waxman's statement, which reflected his views on the legislation.

- ii. In addition, would you agree that it was misleading to characterize H.R. 3132 in this fashion?

No, I believe that Rep. Waxman expressed concern that this provision would have prevented the NRC Chairman from exercising emergency powers until certain actions were taken.

iii. In light of modern means of communication, why would a 24-hour notification requirement impose any burden whatsoever on the NRC or the chairman?

I do not believe there would be an obstacle to notifying Congress within 24 hours of a decision to exercise emergency authority. In fact, a provision in last year's appropriations bill requires notification to Congress.

Questions from:

Senator Jim Inhofe

1. Many of the regulations being considered by the NRC today are in response to the Fukushima disaster in Japan, but I think one thing that often gets lost in the discussion is how different our cultures and regulatory structures are.

In many ways, our system is already well protected against an accident like that happening here at home. In some areas it has to do with who can make decisions...in others it is because of changes we made to our regulatory structure following 9/11.

Can each of you discuss how the Japanese and U.S. cultures and regulatory models are different, such that the U.S. nuclear fleet is less vulnerable, at the base level, to something like Fukushima happening here?

Unlike the U.S., Japan did not have an independent nuclear safety regulator at the time of the Fukushima accident. Japan's Nuclear Regulation Authority was established in 2012. In November 2013, the NRC staff prepared a comparison of the U.S. Japanese regulatory requirements in effect at the time of the Fukushima accident. Separately, the Near-Term Task Force Report made a number of recommendations aimed at enhancing nuclear safety in the United States.

2. The NRC recently voted to approve its waste confidence rule, which was reassuring to me. This decision paves the way for the NRC to consider new licenses and extensions of existing licenses. Can you both confirm that all of the applications for extending existing licenses will be approved by the NRC?

If confirmed, I would evaluate each license renewal application on the merits and apply the relevant statutory and regulatory requirements.

3. Mr. Baran, the landscape of the nuclear industry has changed a lot over the last few years. From your view, what does the future hold for the nuclear industry and how does that inform your perspective as a potential NRC Commissioner?

While NRC and nuclear energy issues are one of my main responsibilities on the Energy and Commerce Committee staff, I have worked on a range of energy and environmental issues, including electric grid reliability, cyber and physical security, and energy market issues. I believe that background is relevant to the work NRC does as it helps me to understand the landscape in which NRC operates and the role it plays as a regulator.

4. Mr. Baran, do you agree that all regulations and orders considered by NRC should have their benefits outweigh their cost, particularly considering the cumulative impact of the many minor regulatory changes that the NRC considers?

Under NRC's backfit rule, as I understand it, unless a required modification to an existing facility is necessary for adequate protection, the benefits of the required modification must exceed the costs.

5. Mr. Baran, the Commission recently voted on the waste confidence rule. Chairman MacFarlane expressed concerns that the NRC's long-term confidence about the lack of environmental risk from on-site storage is not fully founded and should be more aggressively examined. The other three

Commissioners did not share this view.
What is your position on the Waste Confidence rule? How would you have voted?

The Commission recently voted to finalize the rule on continued storage of spent fuel (formerly referred to as “waste confidence”) and the related generic environmental impact statement. I have not had the opportunity to review the entire environmental impact statement so I have not formed an opinion about some of the specific issues addressed by the Commissioners related to the adequacy of the EIS.

6. Mr. Baran, in our meeting yesterday we spoke about the potential for some regulatory streamlining when it comes to the decommissioning process, which has been a hot-button issue here on the Committee for the past year. It’s my view that each reactor is different, and that the required steps for decommissioning are not met on an exact timeframe but can be delayed or clogged by individual issues at any one reactor. Some go fast, others go more slowly. Can you articulate more of your vision for what a revamped decommissioning process would look like?

With several plants retiring, I think it may make sense to take a fresh look at some decommissioning issues. If confirmed, I would want to explore whether a rulemaking could address some of these issues in a more comprehensive way. In examining these issues, I would want to hear from stakeholders, talk with NRC staff, and discuss the issues with my fellow Commissioners.

Questions from:

Senator John Barrasso

1. The Nuclear Regulatory Commission (NRC) is charged with regulating in situ uranium recovery. But recently we have seen EPA take a more aggressive role in evaluating in situ uranium projects. EPA has seized on its authority to approve aquifer exemptions as a back door way to regulate the uranium mining industry. This is troubling as EPA lacks expertise on in situ uranium recovery.

Question: How can the NRC work more closely with EPA to reduce redundancy in the regulatory process and ensure projects are evaluated on a timely basis?

I am not familiar with this particular issue. If confirmed, I would want to hear from stakeholders, talk with NRC staff, and discuss the issue with my fellow Commissioners.

2. EPA is also attempting to regulate lined evaporation ponds at uranium recovery facilities. This is completely duplicative of what NRC does with respect to its licensing authority under the Atomic Energy Act.

Question: If confirmed, what steps will you take to reduce this type of duplication that leads to unnecessary delays and puts additional burdens on the uranium mining industry?

I am not familiar with this particular issue. If confirmed, I would want to hear from stakeholders, talk with NRC staff, and discuss the issue with my fellow Commissioners.

3. NRC's timely review of license applications is critical to the success of America's uranium mining industry. NRC has recently sent uranium recovery applicants formal notifications stating that the timely completion of license applications may be impacted due to insufficient resources.

Question: Would you please explain how the process for licensing can be impacted when the industry is subject to a full cost-recovery fee structure in support of NRC activities?

I think it is important for NRC to have an efficient licensing process. If confirmed, I would want to talk with my fellow Commissioners, the NRC staff, and stakeholders to understand if the process can be improved. My understanding is that some of the NRC licensing staff has been working on implementation of post-Fukushima lessons learned and the continued storage of spent fuel rulemaking.

Questions from:

Senator Jeff Sessions

1. The Tennessee Valley Authority has announced they are on-time and on-budget to complete the first new nuclear unit in the U.S. in late 2015 at Watts Bar. I recently had staff participate in a tour of the site and report on the progress being made. Do you currently have plans to see this site in person since one of your first major actions on the NRC will be to vote for or against licensing of this plant? Will you commit to visiting the plant before the NRC votes on licensing the plant?

If confirmed, I look forward to taking a first-hand look at a number of NRC-regulated facilities.

2. Do you agree that the NRC's existing regulations governing decommissioning of nuclear reactors are adequate for the safety of the public?

With several plants retiring, I think it may make sense to take a fresh look at some decommissioning issues. If confirmed, I would want to explore whether a rulemaking could address some of these issues in a more comprehensive way. In examining these issues, I would want to hear from stakeholders, talk with NRC staff, and discuss the issues with my fellow Commissioners.

3. The NRC has established rules, policies, and guidelines governing the release of NRC-related information. These rules, policies, and guidelines – like those of any independent Commission like the NRC – may change over time. Do you agree to abide by those rules, policies and guidelines that are currently in effect? Do you agree to not release NRC documents or information to third parties (including the media, members of Congress or their staff, environmental groups, or other entities) except as otherwise required by law and NRC rules, policies, and guidelines?

One of NRC's Principles of Good Regulation is openness. If confirmed, I would abide by any applicable requirements while endeavoring to enhance transparency.

4. Have you made any commitment to release any information to any member of Congress or their staff if you are confirmed?

I have made no specific commitment to release any particular information, but I have expressed my view that NRC should work to provide Congress with the information it needs to perform its important oversight role.

5. Under the Nuclear Waste Policy Act, Yucca Mountain is the site designated for the nation's geologic repository. Do you agree or disagree? Please explain.

I agree. NRC is required to follow the law, which is currently the Nuclear Waste Policy Act.

6. The NRC has established rules, policies, and guidelines for responding to Congressional inquiries. Will you follow those policies as long as they are in force?

One of NRC's Principles of Good Regulation is openness. If confirmed, I would abide by any applicable requirements while endeavoring to enhance transparency and provide Congress with the information it needs to perform its important oversight role.

7. Have you met with or spoken with Senator Harry Reid?

No.

Questions from:

Senator Mike Crapo

1. Do you view growing our nation's nuclear fleet as imperative to a successful national energy strategy? From a perspective of NRC policy, what are the impediments to achieving this growth?

NRC's role is to be a nuclear safety regulator, not to set general energy policy. I would observe though that nuclear plants generate low-carbon, baseload power that is currently about 20% of the U.S. electricity mix. In my view, it is important for NRC to have an efficient licensing process.

2. What important actions do you think need to be taken from a regulatory perspective to ensure long term sustained operations of the currently licensed nuclear power fleet?

If confirmed, I look forward to talking with stakeholders, the NRC staff, and my fellow Commissioners about any needed actions to ensure the long term safety of the commercial nuclear reactor fleet.

3. What substantive regulatory changes may be required to encourage maturation of a small modular reactor industry? Construction of design certified large light water reactors?

In my view, it is important for NRC to ensure that it has an efficient and effective process for licensing small modular reactors as well as other designs and reactors. In my view, NRC should be thinking through any novel issues posed by the SMR design certification applications expected in 2015 and 2016 so that it is prepared to examine them in an expeditious manner. If confirmed, I look forward to talking with stakeholders, the NRC staff, and my fellow Commissioners about whether such substantive regulatory changes are needed.

4. What substantive regulatory changes may be required to the current license extension criteria and process to facilitate sustained availability of the current fleet?

If confirmed, I look forward to talking with stakeholders, the NRC staff, and my fellow Commissioners about whether such substantive regulatory changes are needed.

5. Do you believe the NRC regulatory process inappropriately inhibits innovation in the United States? What steps should be taken to warrant against potential inhibition?

In my view, NRC's role is to ensure nuclear safety in a thoughtful way. NRC has regulatory mechanisms to ensure that the costs and benefits of regulatory requirements are appropriately considered. In addition, NRC has an effort underway to examine the cumulative effects of regulation.

6. Companies such as Terra Power are trying to deploy new reactors that do not use traditional light water reactor technology. The Nuclear Regulatory Commission's lack of a framework to license non-light water reactor technologies is cited as an impediment to deployment in the US. Indeed, Terra Power, which is supported by Bill Gates, is looking to build its first reactor in China because of the NRC's licensing process. Should the NRC adapt its licensing process to be responsive to new technologies?

I think it is important for NRC to ensure that it has an efficient and effective process for licensing reactors using new designs and technologies. If confirmed, I look forward to talking with stakeholders, the NRC staff, and my fellow Commissioners about whether changes to the licensing process are needed.

Questions from:

Senator Roger Wicker

1. On August 26, 2014, the NRC approved the Continued Storage Rule (CSR) and Generic Environmental Impact Statement (GEIS), which had been prepared by NRC staff following a ruling in 2012 by the D.C. Circuit. This rule is of particular interest to me as the Commission had stayed licensing decisions until this rule was finalized. As you may or may not be aware, there is a nuclear plant in my state – the Grand Gulf Nuclear Station – that currently has a license renewal application under review at the NRC. The passage of this rule and the Commission decision to allow licensing decisions to go forward will mean the decision on this review can be finalized.
 - i. Would you have voted in support of the CSR/GEIS, if you were already a member of the Commission? Please explain.
 - ii. In his vote, Commissioner Ostendorff concludes: "I am confident that the agency has appropriately responded to the DC Circuit Court of Appeals' remand and has fulfilled its NEPA obligation for continued storage of spent nuclear fuel." Commissioner Ostendorff is an attorney. He also served as counsel and staff director for the House Subcommittee on Strategic Forces. As part of a distinguished Navy career, he commanded a nuclear attack submarine. He also holds an engineering degree and served as the Director of the Committee on Science, Engineering and Public Policy at the National Academies, and as the Principal Deputy Administrator at the National Nuclear Security Administration. Do you also have confidence that the NRC has "appropriately responded" to the requirements of the D.C. Circuit ruling from 2012?

The Commission recently voted to finalize the rule on continued storage of spent fuel (formerly referred to as "waste confidence") and the related generic environmental impact statement. I have not had the opportunity to review the entire environmental impact statement so I have not formed an opinion about some of the specific issues addressed by the Commissioners related to the adequacy of the EIS.

2. The NRC is guided by a set of principles of good regulation – which are independence, openness, efficiency, clarity, and reliability. Can you explain how you will adhere to each of these principles as a Commissioner and how these will guide your decision making?

I think that NRC's Principles of Good Regulation are important touchstones for carrying out NRC's vital safety mission. If confirmed, I will be an independent professional, exercise my best judgment in carrying out my duties, and work hard to ensure that NRC decisions are understandable, fact-based, unbiased, and transparent.

3. Are you familiar with the NRC rulemaking process? Do you think timeliness of decisions and matters before the Commission is important?

Yes, I am familiar with NRC's rulemaking process and think timeliness of decisions is important.

Questions from:

Senator Deb Fischer

1. **Cameco's Crow Butte Uranium Mine**

As we discussed at the hearing, NRC's timely review of license submittals is critical to the success of our domestic uranium mining industry. At present in Nebraska, there are multiple re-licensing proposals and new license applications that have, to date, taken seven years to review. I have written to the Commission to encourage swift action in order to protect the economic environment of the communities that have relied for decades on these operations—operations that safely and responsibly produce critical fuel for our nation's domestic nuclear energy industry. In response, the Commission has stated that the reviews are continuing, but that it may be another full year before a final decision is made. Should you be confirmed, will you commit to familiarizing yourself with the situation regarding the pending license decisions in Nebraska and following up with my office within 30 days of your confirmation to discuss the delays and work to expedite the decisions?

If confirmed, I look forward to familiarizing myself with the issue and having further discussions with your office about it.

2. **Rulemaking**

On May 19, 2014, the Commission acted on an NRC staff recommendation regarding three specific recommendations arising out of the Near-Term Task Force Report's suggestion to review whether the NRC should establish a "logical, systematic, and coherent regulatory framework for adequate protection that appropriately balances defense-in-depth and risk considerations."⁸ The three staff recommendations were approved by the Commission even though the NRC staff also acknowledged that these changes "are not needed to maintain safety of nuclear power reactors."

i. Do you agree with the action taken by the Commission in this vote?

I have not reviewed this vote and would reserve judgment until I have done so.

ii. Do you believe that the NRC should impose costly new requirements for nuclear reactors even if the new requirements cannot be shown to enhance safety to a measurable degree?

If confirmed, I would evaluate each such issue on the merits and would want to hear from stakeholders and the NRC staff and discuss the issue with my fellow Commissioners.

iii. In her vote on this matter, Commissioner Svinicki notes that NRC cost estimates associated with new requirements have "understated reality by orders of magnitude." Do you believe it is important that NRC estimates of the costs on industry associated with implementation of new requirements are accurate? If so, what efforts do you believe may be necessary to ensure more accurate cost estimates?

⁸ NRC Voting Record, May 19, 2014, <http://www.nrc.gov/reading-rm/doc-collections/commission/cvr/2013/2013-0132vtr.pdf>.

Yes, I believe that cost and benefit estimates should be accurate. If confirmed, I would want to hear from stakeholders and the NRC staff and discuss the issue with my fellow Commissioners.

Senator BOXER. Thank you, Mr. Baran.
Mr. BURNS.

**STATEMENT OF STEPHEN G. BURNS, NOMINATED TO BE A
MEMBER OF THE NUCLEAR REGULATORY COMMISSION**

Mr. BURNS. Thank you, Madam Chairman.

It is a pleasure to be here before you. I thank you and the members of the committee for the opportunity to appear before you today.

I am honored to have been nominated by the President to serve as a commissioner on the NRC and if confirmed, I pledge that I will dedicate myself to the critical safety and security mission of the agency and to work well with my fellow commissioners, including Mr. Baran as well as the existing commissioners, Dr. Macfarlane and Commissioners Ostendorff and Svinicki, and to cooperate with the committee in fulfilling its important oversight role.

I want to thank my family, particularly my wife, Joan, who is watching in Paris today via video and my son, Chris, who is here with me, and my daughter, Allison, for their support and encouragement as I appear before you today.

I want to express my appreciation to former colleagues with whom I have worked over the years at the NRC for their best wishes and their support for my nomination.

My professional life reflects a tradition of public service in my family. It goes back to my grandfather who was a volunteer fireman in White Plains, New York and my father, who after graduating from West Point, served a career in the U.S. Army Corps of Engineers. After retiring from the military, he served local governments in West Chester County, New York and two towns in Massachusetts.

I learned from my father the importance of integrity and honesty in carrying out one's responsibilities. I have tried to incorporate those values in whatever position I have been assigned.

As Senator Cardin noted, I retired as a career employee from the NRC in 2012 before taking on my current post at the OECD Nuclear Energy Agency in Paris. I joined the NRC in 1978 in its honors attorneys program and as noted, spent a career there.

I was provided tremendous opportunities as a young lawyer to work with NRC technical staff on a number of critical issues facing the agency such as the implementation of safety improvements after Three Mile Island and enhancements to NRC's enforcement and investigations programs.

An important experience for me was my onsite support to an NRC incident investigation team in its evaluation of the loss of feedwater incident at the Davis-Besse plant in 1985, one of the most significant events after the Three Mile Island accident.

These early years at the agency taught me the importance of good communication and cooperation with the NRC staff to support the NRC's mission. I served on the staff of commissioner and later chairman Kenneth M. Carr, a retired Navy admiral who had served on the USS Nautilus, the first nuclear submarine, who later commanded the Atlantic Submarine Fleet.

As his legal advisor and later chief of staff, I was deeply involved in efforts to adopt licensing reform proposals that are now applied to new reactor licensing under NRC regulations, as well as to adopt the maintenance rule and establish a framework for license renewal.

After his term ended in 1991, I became the head of the new Office of Commission Appellate Adjudication which the Commission had established to assist it in taking more direct responsibility for adjudicatory matters that came before the agency.

In organizing the office, I focused on establishing a process that would allow the Commission to reach timely decisions on adjudicatory matters.

When I returned to the Office of General Counsel in 1994, I served as associate general counsel and then deputy general counsel for many years. In these positions, I was senior counsel to the executive director for Operations and managed the legal staff responsible for providing advice on licensing and enforcement matters, personnel and contracting matters and representing the staff in agency adjudications.

I served on a number of agency task forces on significant issues to involve the implementation, for example, of the agency's license renewal rule.

The Commission approved Chair Dale Klein's appointment of me as general counsel in 2009. As general counsel, I managed a staff of some 110 employees to provide legal services across a range of agency activities.

I was always mindful of the responsibility to support all commissioners in carrying out their duties. I always sought to ensure that my advice reflected due consideration of the relevant legal principles.

As you know, since 2012, I have been at the NEA in Paris. I have been working with international partners who are members of the agency in accomplishing the NEA's mission to help the safe, environmentally friendly implementation of nuclear power for countries who choose to do so.

During my work at the NEA, I have noticed the tremendous esteem in which the international community holds the NRC. If confirmed, I believe with my experience at NRC and NEA, I will strive to continue to try to achieve that same reputation at the NRC.

I have enormous respect for the staff, I have enormous respect for the commissioners and I will promise you that I understand the importance of ensuring the strength and integrity of the institution to carry out its mission.

Thank you very much.

[The prepared statement of Mr. Burns follows:]

PREPARED STATEMENT OF STEPHEN G. BURNS

Senate Committee on Environment and Public Works
September 9, 2014

Chairman Boxer, Ranking Member Vitter, and members of the Committee, I want to thank you for this opportunity to appear today before the Committee on Environment and Public Works. I am honored to have been nominated by President Obama to serve as a Commissioner on the Nuclear Regulatory Commission (NRC) and, if confirmed, I pledge that I will dedicate myself to the critical safety and security mission of the agency and to cooperate with the Committee in fulfilling its important oversight role.

I want to thank my family, particularly my wife Joan and my children Christopher and Allison, for their support and encouragement as I appear before you today. I want also to express my appreciation to former colleagues with whom I worked over the years at the NRC who have extended their best wishes on my nomination.

My professional life reflects a tradition of public service in my family that goes back to my grandfather, a volunteer fireman in White Plains, New York, and my father who served as a career officer in the U.S. Army and who, after retiring from the military, served local governments in Westchester County, New York, and in Massachusetts. I learned from my father the importance of integrity and honesty in carrying out one's responsibilities, and I have tried to incorporate those values in whatever position I have been assigned.

As you may know, I retired as a career employee at the NRC in 2012 before taking on my current post at the Organisation for Economic Co-operation and Development's Nuclear Energy Agency (NEA) in Paris. I joined the NRC in 1978 as attorney in the agency's honors program after receiving my law degree from George Washington University and my baccalaureate degree from Colgate University in New York. I was provided tremendous opportunities as a young lawyer to work with NRC technical staff on a number of critical issues facing the agency, such as the implementation of safety improvements identified after the Three Mile Island accident and enhancements to NRC's enforcement and investigations programs. An important experience for me was my on-site support to an NRC incident investigation team in its evaluation of the loss of feed-water incident at the Davis-Besse plant in 1985, one of the most significant operational events after the Three Mile Island accident. These early years at the agency taught me the importance of good communication and cooperation with the NRC staff to support the NRC's mission.

From 1986-1991, I served on the staff of Commissioner and then Chairman Kenneth M. Carr, a retired Navy Admiral who had served on the USS Nautilus, the first nuclear submarine, and who had later commanded the Atlantic submarine fleet. As his legal advisor and later chief of staff during his chairmanship, I was deeply involved in the efforts to adopt the licensing reform proposals that are now being applied to new reactor licensing under NRC regulations,

including combined operating licenses, as well as to adopt the maintenance rule and establish a framework for the license renewal.

After Admiral Carr's term ended in 1991, I was selected to head the new Office of Commission Appellate Adjudication, which the Commission had established to assist it in taking more direct responsibility for appeals in agency adjudications involving licensing and enforcement matters. In organizing the new office, I focused on establishing a process that would allow the Commission to reach timely decisions in adjudicatory matters.

I returned to the Office of the General Counsel in 1994 as Associate General Counsel and also served as the Deputy General Counsel from 1997 - 2009. In these positions, I was the senior counsel to the Executive Director for Operations and managed the legal staff responsible for providing advice on licensing and enforcement actions, personnel and contracting matters, and representing the NRC staff in agency adjudications. I served on a number of agency task forces on significant issues such as the initial implementation of the agency's license renewal process and assessing nuclear security in the wake of the September 2001 terrorist attacks.

The Commission approved Chairman Dale Klein's appointment of me as General Counsel in 2009. As General Counsel I managed a staff of some 110 employees who provided legal services across the entire range of agency activities and who represented the NRC in the federal courts. I was mindful of the responsibility to support all Commissioners in carrying out their duties. I always sought to ensure that my advice reflected due consideration of the relevant legal principles, statutes, and precedent.

I retired from the NRC in 2012 after nearly 34 years of service to assume my current position as Head of Legal Affairs at the NEA. My current duties include providing legal support to joint research projects on nuclear safety, supporting the contracting parties to the Paris Convention on third party nuclear liability, publishing a semi-annual journal on nuclear law, and conducting educational programs on nuclear law. For example, over the past two weeks I participated in the annual International School of Nuclear Law, a two-week course hosting nearly 60 participants from about 40 countries to cover the fundamental legal principles necessary for the safe and secure use of radioactive material and operation of nuclear installations.

During my work at the NEA, I have noted the tremendous esteem in which the international community holds the NRC and its staff. If confirmed, I commit to working with my fellow Commissioners to ensure that this respect continues to be well-deserved. I believe my prior experience at the NRC and in the international field has prepared me well to undertake the duties of Commissioner. I have developed a deep appreciation of the need to effectively integrate scientific, engineering, and legal principles in carrying out the agency's responsibilities. I have enormous respect for the dedicated work of the NRC staff in accomplishing the NRC's mission, I understand the importance of ensuring the strength and integrity of the institution to carry out its mission, and I am committed to the goals articulated

in the NRC's Principles of Good Regulation – independence, openness, efficiency, clarity and reliability.

Thank you again for the opportunity to appear before you and I would be pleased to answer your questions.

Environment and Public Works Committee Hearing
September 9, 2014
Follow-Up Questions for Written Submission

Questions for Burns

Questions from:

Senator Barbara Boxer

1. Please indicate whether, in maintaining a public calendar on NRC's website of your meetings and travel:
 - i. You will provide advance public notice of your meetings with outside stakeholders on your calendar in a manner similar to the Consumer Product Safety Commission¹, with the understanding that on occasion the times, attendees and agendas of meetings might change and require revision.
 - ii. You will provide advance public notice of your staff's meetings with outside stakeholders on your calendar in a manner similar to the Consumer Product Safety Commission², with the understanding that on occasion the times, attendees and agendas of meetings might change and require revision.
 - iii. You will keep your public calendar up to date instead of following the practice many Commissioners appear to follow of updating them retrospectively every 1-2 months.
 - iv. You will include meetings between your staff and outside stakeholders on your public calendar.
 - v. The meetings listed on your public calendar will include a description of the meeting agenda.
 - vi. The meetings listed on your public calendar will include a list of attendees.
 - vii. The meetings listed on your public calendar will include meetings that take place outside NRC, including meetings that take place domestically and internationally.

Answer:

I would endeavour to provide a public calendar consistent with the scope of information suggested in the question. I would like to consult the NRC security office before providing prospective notice of some meetings in foreign countries, although I would anticipate providing the information retrospectively on the calendar.

¹ <http://www.cpsc.gov/en/Newsroom/Public-Calendar/>

² <http://www.cpsc.gov/en/Newsroom/Public-Calendar/>

Questions from:
Senator Cory Booker

1. Many commentators have noted that one of the more promising developments related to the future use of nuclear energy is the work being done by several companies to design and license small modular reactors (SMRs). In my own state, Holtec International was granted \$260 million in tax credits by the New Jersey Economic Development Authority that will be used to bring a 600,000 square foot manufacturing facility and design center to Camden. As I understand it, the promise of SMRs is contingent upon the NRC granting a design certification for this technology that recognizes the many differences between the SMR technology and today's large reactors including requirements that might be applicable for emergency planning, security, and control room staffing among other factors. While the NRC has been in discussion with SMR vendors for a number of years, I further understand that not much progress has been made in the development of a regulatory regime reflecting the many different characteristics of these reactors from either those currently in operation or under construction in Georgia and South Carolina.
 - i. If confirmed by the Senate, can you tell me what priority you will place on the development of appropriate regulatory requirements that will allow SMR technologies to become a viable option for power production both here in the U.S. and in international markets?
 - ii. As a Member of the Commission, will you do your part to ensure that adequate resources are available to the staff that will allow them to address the necessary policy and regulatory issues applicable to the design certification of SMR technologies?

Answer

- i. I would ensure that appropriate priority is placed on ensuring the NRC has the necessary regulatory framework and associated requirements for SMRs consistent with the anticipated timing and workload expected with respect to such technologies.
- ii. Yes.

2. In 2008, 17 applications were submitted to the NRC to build new nuclear plants. A significant number of those applications are still under review by the NRC 6 years later.

If confirmed, what will you do to support and influence the NRC review process to become as efficient as possible?

Answer

In a number of cases, I understand that applications for new facilities have been deferred by the applicant. Nonetheless, I believe that the initial experience with implementation of the Part 52 process used for new reactors has helped the agency understand how to improve the handling of applications and improve the consistency of the review process. I believe that the agency should incorporate lessons learned from the review of applications over the past few years to improve the process and continue to set timelines as goals for completion of its review absent changes or deferrals proposed by the applicant

Questions from:

Senator Edward J. Markey

1. NRC's Office of Investigations (NRC OI) was created on April 20, 1982, following the recognition that NRC's wrongdoing investigations had been impeded by NRC personnel in the past. For example, on April 6, 1982 I held a Congressional hearing into a case where NRC officials had altered the conclusions of a safety report that found that a pump company had falsified and removed records prior to an NRC inspection.¹ The safety report was whitewashed after NRC staff had showed the draft report to a former NRC Chairman who subsequently was hired by the subject of the investigation. In 1985, when the NRC proposed reorganizing the NRC Office of Investigations so that it reported to NRC's Executive Director for Operations rather than directly to the Commissioners, I wrote to the Commission to urge it not to do so out of concern that such a change might lead to investigations again being influenced by others within the agency.

A May 22, 2014 briefing my staff received on an NRC OI investigation into a decommissioning funding status matter related to Exelon has raised concerns that similar problems may exist today. Specifically, I am concerned that Exelon and NRC's Office of General Counsel (NRC OGC) personnel may have inappropriately attempted to interfere with this investigation, that NRC staff who assisted with the investigation were retaliated against, and that the NRC OI lacks the resources and the independence that it needs in order to perform its important mission.

Unlike the NRC IG, NRC OI does not have its own in-house technical staff, but has to 'borrow' subject matter experts from other NRC offices. NRC OI stated at the May 22, 2014 meeting with my staff that there have been instances when their investigative efforts have been adversely impacted because of the inability to obtain independent and dedicated access to technical expertise. The technical expert present at the May 22, 2014 meeting stated that they had been retaliated against by their own management as a result of the work they had performed in support of the NRC OI investigation. It is also apparent to me that the reliance by NRC OI on 'borrowed' NRC staff from other NRC program offices could cause a conflict of interest in the event that NRC OI is investigating licensee wrongdoing that may have been inadvertently enabled or improperly authorized by the NRC program office with supervisory authority over the borrowed technical staff.

Unlike the NRC IG, NRC OI does not have its own in-house legal staff, despite a pending 2012 request made by the Director of OI to receive a dedicated counsel. Since NRC OGC reports directly to the Commission and NRC OI reports to the NRC Executive Director for Operations, NRC OI is also not able to equitably assert its views or obtain independent legal advice.

- i. Will you work to ensure that NRC OI has the dedicated technical and legal resources that it needs to conduct the independent investigations it was set up to conduct?
- ii. Will you also work to ensure that there is an effective way for it to communicate directly with the Commission as it was originally set up to do?

Answer

- i. I will work to ensure that OI is able to effectively accomplish its mission and has necessary technical and legal support.

¹ <http://www.nytimes.com/1982/04/06/us/atomic-unit-revised-report-after-review-by-company.html>

ii. I would work to ensure that OI has effective channels of communication with the Commission. I would note that, historically, the directors of the major offices of the NRC, even though they do not report directly to the Commission, have the ability to make such communications, including through periodic meetings with the Chairman and Commissioners individually. If confirmed, I would work to ensure that this line of communication remains open to all office directors, including the director of OI.

2. Questions on Foreign Ownership

The text of the Atomic Energy Act of 1954, the Act which governs the NRC and nuclear energy more broadly – contains a firm restriction on the issuance of nuclear power plant licenses to foreign entities. According to Section 103 of the Act,

No license under this section may be given to any person or activities which are not under or within the jurisdiction of the United States No license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.²

On June 3, 2013, the NRC requested written public comment on its regulatory requirements “related to foreign ownership, control, or domination of commercial nuclear power plants.” In particular, the NRC requested comments about “foreign ownership, control or domination issues up to and including 10 percent indirect foreign ownership; criteria for assessing proposed plans or actions to negate direct or indirect foreign ownership or foreign financing of more than 50 percent but less than 100 percent,” and “the availability of alternative methods such as license conditions for resolving” foreign ownership, control, or domination issues.³ The Federal Register notice indicates that this request for comment on foreign ownership regulations originally arose from a request for a license for a particular plant,⁴ specifically, from the Commission’s decision against granting a nuclear license for the Calvert Cliffs Nuclear Power Plant to an entity that was 85% owned by the government of France.⁵

On September 8, 2014 NRC staff sent an options paper to the NRC that included some potential recommendations for loosening the statutory prohibition on foreign ownership of nuclear reactors via regulation. Two separate non-concurring opinions signed by a total of 10 NRC staff, including very senior NRC managers, accompanied this options paper (but were not made public). These opinions raised serious national security concerns associated with the proposals.

- i. Do you agree that each Commissioner should look especially closely at any policy paper that is accompanied by such a large number of non-concurring views written by NRC’s top experts on the subject matter when considering how to vote?
- ii. In the past year, my office has heard from an increasing number of whistleblowers from many different offices at NRC. At a recent EPW hearing, I released portions of a report

² Atomic Energy Act of 1954 (as amended), codified in the United States Code at 42 U.S.C. § 2133, available at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0980/v1/sr0980v1.pdf#page=13>.

³ 78 Fed. Reg. 33122, June 3, 2013.

⁴ *Id.*

⁵ See Notice of Issuance of Determination Letter, In the Matter of Calvert Cliffs 3 Nuclear Projects, LLC, and Unistar Nuclear Operating Services, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), Docket No. 52-016, April 8, 2011, at page 2, available at <http://www.nirs.org/nukerelapse/calvert/NRCforeign determinationletter.pdf>.

written by the NRC that actually surveyed those who have attempted to use NRC's non-concurrence process for resolving policy disagreements. A staggering 75% of those who used the process said they received a poor performance appraisal after they raised their concerns. Almost two thirds of them said they were excluded from work activities by their management. 25 percent were passed over for promotions, and 25 percent were even verbally abused by their colleagues and their supervisors. Do you agree that the 10 people who bravely chose not to concur with the foreign ownership policy paper should not experience any retaliation for doing so?

iii. Do you also agree that all NRC employees should feel free to raise concerns or disagree?

Answer

i. Yes. As a Commissioner, if confirmed, I would take into account the recommendation made in the paper as well as differing views as to the recommendation.
ii. Yes.
iii. Yes.

Questions from:

Senator David Vitter

1. Since January 1, 2014 have you discussed the proposed repository for spent fuel at Yucca Mountain with Senator Harry Reid, anyone who works for or is associated with Senator Reid, any other elected official, anyone from the Obama Administration? Tell me about those discussions. Have you at any time entered into any agreements or made any commitments with respect to Yucca Mountain - formal, informal or implied? Do you consider Yucca Mountain "unworkable" as a geologic repository for spent nuclear fuel and high level radioactive waste? Please explain.

Answer

I have not had such discussions nor have I entered into any express or implied agreements with respect to Yucca Mountain. Given the possibility that the Yucca Mountain adjudication remains pending before the Commission in its adjudicatory capacity and that the staff is still completing the Safety Evaluation Report, I respectfully decline to express a view as to whether the site is "unworkable".

2. The NRC's budget and staffing have dramatically increased over the last decade. During that period, the agency's budget has doubled and staffing has increased by about 1000 employees. This has come at a time when the number of operating reactors has dropped by about 10%, the number of material licensees has decreased even more significantly, and the number of new plants being constructed is very limited and far below the projections. What are your perspectives on this matter and what would you do to address it?

Answer

I would work with my fellow commissioners to ensure through the budget development process that the agency's resources appropriately reflect the anticipated workload and priorities.

3. The NRC has been accused by the nuclear industry and other stakeholders of over-regulation – imposing unnecessary, costly, and burdensome regulations on the industry that have little or no safety benefit. Many stakeholders believe that this unnecessary regulatory burden is a primary factor in the premature retirement of several reactors in the last year and the financial challenges threatening the future of many nuclear plants today. In response, the industry has an effort ongoing to address cumulative regulatory burden and drive NRC regulatory reform

Mr. Burns: You served with the NRC during a period when many of these regulatory burdens were imposed on the industry. What are your views on this matter?

Answer

Whether regulatory requirements are appropriate can be addressed through the NRC's well-established backfitting process and the opportunities afforded to the industry and other stakeholders to comment on their development. I also understand that the agency has focused on assessing the cumulative effects of regulation to ensure greater coherency in regulatory requirements. I support efforts to achieve greater consistency and to avoid redundancy or the imposition of unnecessary burdens. At the same time the agency must also ensure that necessary safety objectives are reflected in NRC's regulatory requirements.

4. It has been the NRC's practice and policy to approve changes in Security and Emergency Planning requirements at nuclear plants when they transition from operating plant to plants being decommissioned. Clearly, the NRC has done so based on sound science and the fact that plants

undergoing decommissioning pose little radiological risk to the public. Some of my colleagues are now putting pressure on the NRC to impose the same Security and Emergency Planning requirements on decommissioning plants as they do on operating reactors. What are your views on that matter?

Answer

In my view, the NRC should ensure that adequate protection of public safety and security is maintained during the decommissioning process. Although the risks posed during the decommissioning process may be lower than during plant operations, the NRC should ensure that it has a sound basis for any decision to reduce those requirements and a transparent and consistent process to consider such actions.

5. Mr. Burns, you served as NRC General Counsel at the time former Commission Chairman Gregory Jaczko took actions to stop the NRC staff review of the Yucca Mountain construction authorization. At the time, the safety evaluation was essentially complete – now the taxpayers are spending more than \$8 million to restart and complete the job. What legal advice did you give former Chairman Jaczko related to Yucca Mountain? Did you at any time advise former Chairman Jaczko against his course of action? Please explain.

Answer

I was asked to provide legal advice on the guidance reflected in the EDO and CFO's October 4, 2010, memorandum on the FY 2011 continuing resolution with respect to bringing Yucca Mountain activities to an orderly closure. My advice is reflected in an October 15, 2010 memorandum to the entire Commission entitled "Expenditures under a Continuing Resolution". My advice was based on consideration of the Nuclear Waste Policy Act and governing appropriations law and was developed in consultation with legal experts in my office. Although the memorandum concludes that the approach in the EDO/CFO October 4 memo was in my judgment lawful, I also indicated in discussions with some individual Commissioners or their staff that variations on that approach, e.g. as directed by a majority of the Commission, were possible so long as the agency did not obligate expenditures exceeding appropriations.

6. Mr. Burns, is it appropriate for an agency like the NRC to stop working on a project when the work is required by federal law and Congress has appropriated money for it? If a nuclear waste repository different from Yucca Mountain is authorized by federal law, would you similarly stop work on it if the next administration announces it considers that next repository "unworkable"?

Answer

If appropriated funds have been made available to the NRC to conduct specified authorized activities, in my view, the NRC should undertake activities related to the project to the extent such funds are available. If confirmed, I would follow this principle with respect to future activities assigned to the NRC.

7. Mr. Burns, you served a career on the NRC staff before retiring recently. To my knowledge, no former NRC staffer has served as a commissioner for more than twenty years. Is it a good idea for former NRC staffers to serve as commissioners? What are the pros and cons?

Answer

I believe past experience on the staff of the Commission has benefits to subsequent service as a Commissioner. Such experience provides good grounding in the structure of the agency and how it works, its substantive work, organizational values, and its interaction with various stakeholders. I do not believe that there are significant disadvantages to prior service, but I do think it important

in these circumstances to be cognizant of the difference in role as a member of the staff and as a Commissioner.

8. In your tenure at the NRC, what is the most difficult decision you had to make? Talk a little about it.

Answer

Although I addressed many complex legal issues across the course of my career at the NRC, I believe that the most difficult decision involved taking personnel action against a manager in my office for inappropriate conduct. In such matters, there is often conflicting evidence, the possibility of protracted litigation, and the potential adverse effect on office morale. We were able to resolve the matter through negotiation, avoid most adverse consequences and maintain confidence in office management.

9. Mr. Burns, reflecting on your experience as general counsel during the aftermath of the Fukushima accident, do you believe it is unreasonable to require a chairman to notify Congress within 24 hours of a decision to exercise emergency authority and, by acting unilaterally, supplant the Commission?

Answer

I believe good communication with the Commission and the Congress is important. I would prefer that any reporting requirement allow some flexibilities and that circumstances that would trigger a reporting requirement should be well defined.

10. Please list all public speeches or presentations you have made concerning nuclear energy, nuclear safety, spent nuclear fuel/nuclear waste, Yucca Mountain, or other issues of relevance to the work of the Nuclear Regulatory Commission, and please provide copies (written, audio, or video) of any such speeches or presentations.

Answer

I do not have a comprehensive list of presentations immediately available to me; I can forward a more complete list to the Committee at a later date. In the meantime, I can give you a sense of my presentation history in general terms. As General Counsel at the NRC, I appeared before various bar association events attended by a general audience and/or by practitioners in the energy sector (including nuclear energy). See, e.g., *Energy Bar Association General Counsel Roundtable*, ENERGY LAW JOURNAL, Vol. 31, p. 371 (2010). I was invited in 2012 to make presentations on nuclear energy law in the context of the Fukushima accident to students and faculty at the University of Virginia and West Virginia University law schools.

As Head of Legal Affairs at the OECD Nuclear Energy Agency (NEA), I have spoken at industry forums, the International Radiological Protection Association, the International Nuclear Law Association, and the European Commission, on the general topic of nuclear law or on specific subjects of nuclear third party liability or structure of regulatory organizations. See, e.g., A Global Nuclear Liability Regime: A Journey or a Destination?, http://www.burgess-salmon.com/INLA_2012/10156.pdf.

I have also participated in education programs on principles of nuclear law sponsored by the NEA and by law associations in Canada and India. Participants in these programs, include graduate students, lawyers, and professionals in government, industry or nonprofit organizations interested in the nuclear energy field.

11. Please provide a list of all organizations (with an interest in law, policy, energy or environmental issues, nuclear power, nuclear waste, nuclear safety, or related matters) of which you are or have been a member.

Answer

I am a member of the American Bar Association and its Section of Environment, Energy and Resources and its Nuclear Law Committee. I am currently a member of the board of the International Nuclear Law Association. As part of my current duties at the OECD Nuclear Energy Agency, I am President of the Supervisory Board of the International School of Nuclear Law, a joint undertaking of the OECD NEA and the University of Montpellier I in Montpellier, France.

12. Please describe your current role as the Head of Legal Affairs for the Nuclear Energy Agency (NEA) of the International Organization for Economic Cooperation and Development (OECD) and briefly describe any nuclear-related issues and matters you have been involved in during your employment with NEA.

Answer

My duties include providing legal support to joint research projects on nuclear safety, supporting the contracting parties to the Paris Convention on third party nuclear liability, publishing a semi-annual journal on nuclear law, and conducting educational programs on nuclear law.

13. Please identify and briefly describe any federal or state court cases, over the course of your career with the NRC, where you have been counsel of record.

Answer

I did not appear as counsel of record in any case during my career at the NRC. However as a matter of agency practice, the name of the General Counsel is included on all briefs filed on behalf of the Commission and I have listed these below. However, in such circumstances, the General Counsel does not enter an appearance in the case or sign the briefs on behalf of the Commission. In many cases, including the cases set forth below (where the largest number of cases against the Commission is brought) my name appears on the brief.

08-3903, -4833, -5571: *New York v. NRC (2d Cir)*

Challenge to denial of petitions for rulemaking; court ruled in NRC's favor

09-0005-ag: *Brodsky v. NRC (2d Cir)* (petition for rehearing en banc)

Case involved hearing request on an NRC exemption.

09-1112 & 10-1058: *Blue Ridge Environmental Defense League v. NRC (DC Cir)*

Challenges to NRC's decision to reinstate previously-withdrawn construction permits at TVA's Bellefonte site; dismissed for lack of jurisdiction.

09-0005-ag: *Burton v. NRC (2d Cir)*

Challenge made during Indian Point license renewal proceeding concerning NRC's rules specifying permissible doses from operating reactors; court affirmed rejection of contentions.

09-2567 *New Jersey Environmental Federation v. NRC (3rd Cir)*

Challenge asserting that NRC was required to study the consequences of a potential terrorist attack against the Oyster Creek plant; court ruled that NEPA didn't require consideration of impacts not proximately caused by licensing decision.

09-1268: *Shieldalloy Metallurgical Corp v. NRC, et al (DC Cir)*

Challenge by licensee to transfer of authority over New Jersey site under agreement state program; court remanded to the NRC

10-1007: *William Peterson v. NRC (DC Cir)*

Pro se intervenor with his own plan for a repository sought to participate in Yucca adjudicatory proceedings; court rejected petition.

10-1022: *Honeywell International, Inc. v. NRC, et al (DC Cir)*

Challenge to NRC decision not to grant a licensee an exemption in 2009 from decommissioning financial-assurance requirements; court found NRC position to be arbitrary and capricious

11-1168: *State of Vermont Dept. of Pub. Service v. Nuclear Regulatory Commission, et al (DC Cir)*

11-1177: *New England Coalition v. NRC, et al (DC Cir)*

Claim that NRC unlawfully renewed Vermont Yankee's operating license without requiring Vermont Yankee to have in place a state water-quality certification under section 401 of the Clean Water Act; court upheld decision due to failure to exhaust NRC remedies.

11-1271: *In re Aiken County, et al (DC Cir)*

Yucca Mountain mandamus case

14. How has your work as general counsel of the NRC prepared you to become a commissioner?

Answer

As General Counsel, I managed a staff of some 110 employees who provided legal services across the entire range of agency activities and who represented the NRC in the federal courts. I believe the experience prepared me for the role of commissioner by focusing on the important integration of legal and technical matters that were presented to the Commission for decision and the need for a full airing of views on these important decisions. As General Counsel, I was focused on the timely delivery of legal services to the staff and the Commission in order; I think this has prepared me to focus, if confirmed, on timely decision-making by the Commission. I was mindful of the responsibility to support all Commissioners in carrying out their duties, and I believe this prepares me, if confirmed, to engage with my colleagues and the NRC staff in a collegial and constructive manner.

15. The first of the NRC's five Principles of Good Regulation is "Independence."

- i. What does this principle mean to you, and how would it impact your role and actions as a commissioner?
- ii. Do you commit to zealously guard the independence of the NRC and oppose any efforts to undermine it?

iii. Would you agree that the Commission should not allow political meddling from Congress or other parts of the executive branch to interfere with the NRC's independent decision-making processes?

Answer

- i. I believe the articulation in the Principles of Good Regulation is a good starting point for the concept of independence: "Nothing but the highest possible standards of ethical performance and professionalism should influence regulation. However, independence does not imply isolation. All available facts and opinions must be sought openly from licensees and other interested members of the public. The many and possibly conflicting public interests involved must be considered. Final decisions must be based on objective, unbiased assessments of all information, and must be documented with reasons explicitly stated."
- ii. I do. I think that is a Commissioner's obligation to guard the agency's independence consistent with governing law.
- iii. Decisions should reflect an independent, reasoned judgment based on the facts and opinions in the record offered by interested stakeholders, which can appropriately include input from Congress and other agencies in the Executive Branch.

16. The NRC's Principles of Good Regulation include "Reliability," and state that "Once established, regulation should be perceived to be reliable and not unjustifiably in a state of transition." Do you agree that this Commission, and each Commissioner, has a responsibility to ensure that the NRC maintains an appropriate degree of regulatory reliability and stability?

Answer

I agree that these principles are appropriate to an effective regulatory program.

17. The New York Times reported on April 8, 2013, that the former Chairman, Gregory Jaczko, suggested that all 104 US nuclear reactors should be phased-out and replaced. The article states: "All 104 nuclear power reactors now in operation in the United States have a safety problem that cannot be fixed and they should be replaced with newer technology, the former chairman of the Nuclear Regulatory Commission said on Monday. Shutting them all down at once is not practical, he said, but he supports phasing them out rather than trying to extend their lives." Do you agree with Dr. Jaczko's view, as described in that article?

Answer

I do not know the basis for the former Chairman's views and I do not hold that position.

18. Under the Nuclear Waste Policy Act, Yucca Mountain is the site designated for the nation's geologic repository. Do you agree or disagree? Please explain.

Answer

I agree that the Nuclear Waste Policy Act designates the Yucca Mountain site for site characterization and evaluation for construction of a high level waste geologic repository.

19. After Congress passed the CR for FY2011, Chairman Jackzo's office directed the NRC Chief Financial Officer and NRC Executive Director to issue a CR "guidance" memo with instructions

that the NRC staff should “continue its activities on the Yucca Mountain license application *in accordance with the Commission’s decisions on the FY 2011 budget...*” According to the NRC OIG report (June 2011), Commissioner Svinicki’s legal advisor contacted you to “question the legal basis for the purported CR guidance.” According to the OIG report, Commissioner Svinicki’s legal position was that the “proper vehicle for resolving the legal question of DOE’s authority to withdraw the license application is through Commission action on the adjudicatory matter, and any direction on the use of funds during the CR, absent specific direction from Congress to the contrary, should not predetermine the outcome of the legal matter pending before the Commission.”

- i. Please state whether you agreed or disagreed with this position as expressed by Commissioner Svinicki.
- ii. Other members of the NRC also raised concerns. When Commissioner Apostolakis questioned Chairman Jaczko about the CR guidance during a meeting on September 30, 2010, the OIG report explains that “Chairman Jaczko assured Commissioner Apostolakis that OGC [office of general counsel] advised him the planned CR guidance was appropriate.” Did you, as general counsel, advise Chairman Jaczko that his planned CR guidance was appropriate? If so, please explain your rationale.
- iii. Commissioner Apostolakis subsequently stated that, at the time the CR guidance was under discussion, Chairman Jaczko did not reveal to him that it would be used to close the Yucca process. At the time the CR guidance was under review, were you aware that Commissioner Apostolakis was misled in this manner?
- iv. The OIG report suggests that Chairman Jaczko implied to Commissioner Magwood that: (1) NRC staff had prepared the CR guidance, and (2) that the CR memo would not result in any precipitous closure of the Yucca review. The OIG report explains, however, that Commissioner Magwood subsequently discovered that both of those claims were incorrect, but not until after the CR guidance was issued. At the time the CR guidance was under review, were you aware that Commissioner Magwood was misled in this manner?
- v. In an official memo dated October 15, 2010, you advised the NRC Chairman and Commissioners that Chairman Jaczko could use the CR guidance process to effectively close the Yucca license review. Please explain your role in advising the chairman and other commissioners about the CR guidance memo, its impact on Yucca Mountain licensing, and your legal basis for concluding that the CR guidance memo, which Chairman Jaczko was using to advance his goal of closing the Yucca license process, was appropriate and lawful notwithstanding the fact that the ASLB had already ruled that the license application could not be withdrawn.
- vi. Your legal opinions were apparently used by Chairman Jaczko to justify his questionable actions on Yucca licensing. For example, the OIG report states that Chairman Jaczko told NRC licensing staff that you agreed with his decision to stop work on the safety evaluation report for the Yucca license. Does the OIG report correctly reflect your involvement in this regard?

Answer

- i. As indicated in my October 15, 2010 memorandum, I did not believe that such a conclusion necessarily flowed from then existing budget guidance, documentation and applicable law.
- ii. My legal views on the approach proposed by Chairman Jaczko and communicated by the EDO and CFO in their October 4 guidance memorandum on expenditures under a continuing resolution are reflected in my memorandum to the Commission dated October 15, 2010, on the subject.

- iii. I did not participate in those discussions and was not aware at the time of the perceptions of Commissioner Apostolakis on his communications with the Chairman.
- iv. At the time, I was not aware of Commissioner Magwood's feeling that he was misled.
- v. The October 15 memorandum addresses only the question of continued expenditures under a continuing resolution. It did not resolve the question of the Commission's review of the ASLB decision on the withdrawal of the application. I prepared the memorandum at my own initiative to ensure that the Commission had a consistent understanding in writing of the legal views I had expressed to the Chairman, EDO and CFO on their proposed approach.
- vi. It would be more accurate to say that I had informed the Chairman that in my judgment the approach was consistent with my understanding of applicable law.

20. The D.C. Circuit ultimately ordered the NRC to move forward with the Yucca license process. Citing the June 2011 report by the OIG, Judge Raymond Randolph of the D.C. Circuit described Chairman Jaczko's actions in the following manner: "Although the Commission had a duty to act on the application and the means to fulfill that duty, former Chairman Gregory Jaczko orchestrated a systematic campaign of noncompliance. Jaczko unilaterally ordered Commission staff to terminate the review process in October 2010; instructed staff to remove key findings from reports evaluating the Yucca Mountain site; and ignored the will of his fellow Commissioners." *In re: Aiken County*, 725 F.3d 255, 267 (D.C. Cir. 2013) (Randolph, J., concurring).

- i. Do you agree or disagree with Judge Randolph's characterization of Chairman Jaczko's actions? Please explain.
- ii. Do you believe your legal counsel was relied upon by Chairman Jaczko to advance his "systematic campaign" to close the Yucca process? Please explain.

Answer

- i. I do not subscribe to the characterization by Judge Randolph in his concurring opinion (which does not constitute the opinion of the majority of the court). Although I respect and would follow, if confirmed, the majority's order that the NRC expend any remaining funds it has on the Yucca Mountain project, I note that Judge Garland's dissenting opinion addresses the pragmatic consideration that the lack of additional appropriations from the Congress prevented any significant progress on the application.
- ii. I think it is clear that the Chairman relied on my legal advice in formulating his position. But I would note that the Commission could have voted to adopt a different approach consistent with the governing legal principles and it did not.

21. A report by the House Oversight Committee in December 2011 found: "The Chairman's actions with respect to Yucca Mountain...eroded the trust of his colleagues on the Commission." Do you agree? Please explain.

Answer

I acknowledge that the report reaches that conclusion and similar conclusions may be reflected in other documents, but the question is a really a matter that can be addressed only by those Commissioners and the Chairman.

22. Citing the June 6, 2011 report by the OIG, the House Oversight Committee report noted that "the Chairman strategically shared varying levels of information with his colleagues in an effort to secure support for the language in the C.R. Memorandum." Was Chairman Jaczko acting within

the letter and spirit of the governing NRC laws, regulations, and policies when he acted in this manner? Please explain.

Answer

The best practice is to provide complete information to support one's arguments and policy views.

23. The June 2011 OIG report suggests that, at least in the view of one commissioner, the General Counsel's office did not feel free to "provide unfiltered advice to the Chairman [Jaczko] without fear of retribution." The OIG report also suggests that "an OGC attorney" was present when Jaczko became "angry" and "animated" with the NRC appellate adjudication staff because they had taken steps to ensure a timely completion of the NRC voting process. Similar concerns were expressed in a separate OIG report issued in June 2012.

- i. During your tenure as general counsel, did you or any member of your legal staff fear retribution, reprisal, or other adverse actions by the Chairman? If so, please explain whether you took steps to remedy those concerns.
- ii. Please explain how you would endeavor to treat other commissioners and NRC staff if confirmed to serve as a member of the NRC?
- iii. During your tenure as general counsel, was the nature, content, or clarity of your legal advice ever impacted by concerns related to the views, responses, or possible actions of the NRC Chairman? Please explain.
- iv. During your tenure as general counsel, did you or any other member of your legal staff feel unable to provide unfiltered, objective legal counsel to Chairman Jaczko or other members of the commission? If so, please explain whether you took steps to remedy those concerns.
- v. Please explain whether your decision to resign your position as NRC general counsel in 2011 was, in any respect, a result of actions by, or concerns related to, Chairman Jaczko.

Answer

i. I was not aware of any such action by the Chairman. Although we had some vigorous debates over a number of issues on which he and I might disagree, I never felt threatened or intimidated by him.

ii. If confirmed, I would treat my fellow Commissioners with respect and seek to engage in productive consensus building to accomplish the mission of the agency. As I did during my entire career at the NRC, I would seek the advice of the staff and work co-operatively with them in accomplishing my duties as Commissioner. I am sensitive to the position of a Commissioner of the agency and would work to ensure that I hear the diverse views of the staff in making policy recommendations to the Commission.

iii. Throughout my tenure as General Counsel, I tried to ensure that my advice and that of my staff was based on a thorough and sound analysis of the law.

iv. No, I did not feel unable to provide straightforward advice to the Chairman and I am not aware of members of my staff feeling that way.

v. It did not. I had been encouraged to apply for my current position by a manager at the Nuclear Energy Agency. I had enjoyed working with NEA on issues and its education programs and thought this would be an interesting opportunity in my career. I was also eligible for retirement which enhanced my ability to take the position.

24. In October of 2011, Commissioners Magwood, Apostolakis, Svinicki, and Ostendorff wrote a letter to the President's chief of staff, stating that the "actions and behavior [of Chairman Jaczko]

are causing serious damage to this institution and are creating a chilled work environment at the NRC." You were serving as the general counsel at the time this letter was sent to the White House.

- i. In October of 2011, were you aware of the actions and concerns related to Chairman Jaczko that were discussed in the commissioners' letter?
- ii. Did you discuss this letter with Chairman Jaczko at any point? If so, please explain.
- iii. If you were a commissioner in October 2011, do you believe you would have also co-signed the letter under those circumstances?

Answer

- i. I was aware of some of the circumstances described in the letter to Mr. Daley and the attached memorandum to Chairman Jaczko from the Commissioners.
- ii. I did not discuss the letter and was not aware of the letter, as I recall, until late November or early December 2011.
- iii. I cannot speculate as to whether I would have signed the letter, particularly since it relies in part on personal interactions between the Chairman and individual Commissioners to which I was not privy or aware. If I were a Commissioner, I would try to exhaust all avenues to try to build consensus and to do my best to maintain good will among my colleagues despite strong differences of view on policy.

25. The June 2011 OIG report suggests that you endorsed Chairman Jaczko's efforts to delay NRC action on Yucca-related issues by finding no legal fault with his practice of refusing to vote on matters in a timely manner.

- i. Please explain your understanding of NRC expectations and practices concerning timely votes by commissioners.
- ii. Please explain your legal basis for supporting Chairman Jaczko's voting delays.

Answer

I do not believe that the question fairly characterizes my views as reflected in the OIG report. See page 35 of the OIG report.

- i. As reflected in the OIG report, I indicated that the general practices and timing of voting laid out in the Commission's Internal Commission Procedures should be followed, but they are not binding law and other circumstances might prevent the Commission from meeting the goals stated therein.
- ii. I did not support voting delays by the Chairman or any other Commissioner. Along with the Director of the Office of Commission Appellate Adjudication, I encouraged the Chairman and other Commissioners to reach a consensus order that would reflect its split decision on whether to review the ASLB decision and provide direction on next steps in the proceeding.

26. The June 2011 OIG report found that, when NRC staff informed the commissioners that the volumes of the safety evaluation report (SER) for the Yucca license would be available ahead of schedule, Chairman Jaczko instructed NRC staff to not attempt to issue the SER volumes ahead of schedule. Senior NRC staff informed the Chairman that his request for a delay was inconsistent with the values of the NRC.

- i. Did you advise Chairman Jaczko on the issue of whether the SER could or should be issued ahead of schedule? If so, please explain.
- ii. Do you believe it was appropriate for Chairman Jaczko to delay finalization of these reports? If so, please explain.

Answer

- i. I do not recall being consulted on the timing of the issue of the SER chapters.
- ii. Chairman Jaczko instructed the staff, as I recall, to maintain the previously announced schedules for issuing the SER volumes. Given the staff's history of adjusting the schedule for the volumes, there are reasonable arguments that could be made for maintaining the current schedule or advancing the completion of the SER volumes. I recall my own staff expressing concern about their ability to complete their legal review with changing schedules on documents that were still susceptible to change by the technical staff.

27. The June 2011 OIG report found that Chairman Jaczko's efforts to block the other Commissioners from receiving drafts of a report, which contained the views of the NRC's Executive Director of Operations, were "inconsistent with the Commissioners' expectations to receive the staff's written views, analysis and recommendations...." The OIG also explained that the "legislative history of the Reorganization Plan establishes that the Commissioners are to have full access to agency information to support their policy decision-making and that the Chairman is not to block the flow of information to the Commissioners." Nonetheless, according to the OIG report, you apparently endorsed Chairman Jaczko's approach to information flow within the commission.

- i. Please explain your view of the legal authority of the NRC chairman to manage and control the flow of information to other members of the Commission.
- ii. Do you believe Chairman Jaczko acted inappropriately when he sought to edit, revise, or otherwise control communications from NRC staff to the commissioners? Please explain.

Answer

The June 2011 OIG report does not appear to address the matter described in the question nor does it indicate that I endorsed a particular approach to information flow. Nonetheless, I provide the following views on the general principles:

- i. The Chairman is responsible under section 2(a) of the Reorganization Plan No. 1 of 1980 "for developing policy planning and guidance for consideration by the Commission." This implies a primary role for the Chairman in ensuring that the Commission is provided matters for its consideration in the execution of its functions. By the same token the Chairman and the EDO through the Chairman are responsible for keeping the Commission "fully and fairly informed about matters within its functions." Section 2(c).
- ii. The Chairman may legitimately discuss proposed policy papers to the Commission. However, Commission procedures speak to the obligations in some circumstances to affirmatively provide certain information to the Commission and allow individual Commissioners to obtain consistent with the Reorganization Plan information directly from the staff.

28. You were listed as counsel of record for the NRC in the D.C. Circuit litigation involving the NRC's failure to complete the Yucca Mountain licensing process. In that case, the NRC (presumably guided, at least in part, by your legal counsel) argued that it could ignore the statutory mandate to proceed with the Yucca process because Congress had not provided, and was not expected to provide in the near future, adequate funding to complete the license process. The court rejected these arguments, citing the existing NRC balance of over \$11 million available for these purposes and stating: "Congress speaks through the laws it enacts."

- i. Please describe your role in the Yucca litigation in the D.C. Circuit.

ii. Please explain whether, in your view, participation as counsel of record in this litigation would require you to recuse yourself from subsequent Yucca-related matters that will come before the Commission.

Answer

- i. As noted in the answer to question 13, as a matter of agency practice, the name of the General Counsel is included on all briefs filed on behalf of the Commission. Although I did not file an appearance or argue the case on behalf of the agency, the agency's Solicitor and I discussed the agency's position and I reviewed drafts of the briefs that were filed in the court before my retirement from NRC in 2012.
- ii. My prior role as General Counsel and the fact that my name appeared on the agency's briefs would not disqualify my from participating in any future Yucca Mountain matters, any more than any Commissioner who participated in an agency decision that was reversed and remanded for further consideration would be disqualified from further participation.

29. On August 26, 2014, the NRC approved the Continued Storage Rule (CSR) and Generic Environmental Impact Statement (GEIS), which had been prepared by NRC staff following a ruling in 2012 by the D.C. Circuit. In his vote on the CSR/GEIS, Commissioner Magwood commented: "I believe the General Counsel deserves special recognition and gratitude for guiding her staff and the agency through this complex matter and doing so with creativity, skill, and legal acumen." In light of your experience as General Counsel of the NRC, would you agree with Commissioner Magwood's assessment of the work of the OGC in this matter?

Answer

I have not had an opportunity to read former Commissioner Magwood's vote, but I also hold the staff of my former office in high regard and know that there are many fine attorneys and staff serving in the office who are dedicated to NRC's mission.

30. As General Counsel of the NRC, you took an active role in defending, as lawful, the actions of Chairman Jaczko—including the use of “emergency powers”—following the Fukushima disaster in March 2011. In particular, you wrote a legal memorandum dated March 17, 2011, stating that Jaczko's actions in response to Fukushima fell within the authority given the chairman of the NRC under Section 3 of the Reorganization Plan of 1980 (that is, “emergency powers” authority). Even though the statute expressly states that the Chairman has “all the functions vested ... pertaining to an emergency *concerning a particular facility or materials licensed or regulated by the Commission ...*,” you believed that the scope of the Chairman's emergency authority extended beyond just incidents involving NRC-licensed facilities.

- i. Please explain your legal basis for such a position at that time.
- ii. Please explain whether you presently continue to hold the same view.

Answer

- i. The legal opinion provided in the March 17, 2011 memorandum focused on a narrow question regarding the Chairman's communication of protective action guidance in an agency press release. I offered the view that, first, the communication was consistent with the Chairman's role as agency spokesman and, second, was also consistent with Chairman's role in emergency response even under the novel conditions at play. The legal basis for my views is described in the March 17, 2011 memorandum and reflects consideration of the Reorganization Plan No. 1 of 1980 and a prior opinion of a prior

General Counsel regarding Chairman Meserve's actions related to NRC's response to the September 2011 terrorist attacks.

- ii. I believe the memorandum is still appropriate to the limited circumstance it addressed.

31. In an email dated March 19, 2011, as part of your work in response to the Fukushima disaster, you informed Lisa Gomer, USAID General Counsel, that: "NRC is not typically involved in emergency response outside the US. Those response activities that are within our scope of responsibility relate essentially to incidents at NRC-regulated facilities." This statement appears to contradict your contemporaneous statement that the chairman's authority in an emergency extends to incidents overseas. Please explain how this view expressed to USAID is consistent with the legal opinions on this matter you provided to Chairman Jaczko in 2011.

Answer

Although I do not have access to an unredacted text of the email communications quoted above, my recollection is that the email to USAID counsel was written in the context of discussions as to whether USAID funding could cover the positioning of an NRC assistance team in Japan. I do not view the two communications as inconsistent, because they addressed different questions at issue. Again, the memorandum regarding the communication of protective action information was narrowly focused on communications which I believed were supported by either the Chairman's responsibilities as agency spokesman or in the emergency response sphere.

32. In your March 2011 memo, you cited a prior legal opinion related to the NRC's actions after 9/11 where one of your predecessors in the Office of General Counsel reasoned that an NRC chairman could exercise emergency powers in the 9/11 context. Your legal memo did not, however, attempt to distinguish 9/11, which involved terrorist acts using hijacked aircraft in America for the purpose of causing mass destruction (with legitimate concern for U.S.-nuclear power plants), from the Fukushima event, which involved a natural disaster impacting a nuclear power station in Japan.

- i. Please explain why your legal memo contained no analysis concerning relevant distinctions between the 9/11 context and the Fukushima context.
- ii. Your March 2011 legal memo concluded: "In context of the current situation and considering the legal authorities and prior opinions thereon, the Chairman's actions are a reasonable application of his authority under section 3 of the Reorganization Plan." Do you continue to agree with that conclusion?

Answer

- i. The earlier memorandum was cited primarily because it involved a circumstance in which there was an inchoate, in specific threat that did not focus on any particular facility. I would note that I also emphasized the novel nature of the question in the memorandum.
- ii. As indicated in my answer to prior questions, I agree with the conclusion reached in the prior memorandum on the question presented. The memorandum should not be viewed as a blanket authorization to undertake any action under the rubric of emergency powers.

33. When you sent a draft of the March 2011 "emergency powers" legal memo via e-mail to Chairman Jaczko's policy director on March 17, 2011, at 2:57 p.m., you included a very brief note, stating: "I'm hoping this is what you're looking for...." By the end of the day, the final memo, with just a few additional revisions, was issued as a final memo "to file" (also dated

March 17, 2011). This email appears to validate some of the concerns that, during your tenure, you may have become a “yes-man” for Chairman Jaczko.

- i. Please explain what you meant when you told Chairman Jaczko’s office: “I’m hoping this is what you’re looking for”?
- ii. Before authoring this legal memo, did you receive any instructions or directions from Chairman Jaczko as to his expectations or desires for the final legal work product?
- iii. When you authored the emergency powers legal memo in March 2011, did you seek to write a memo that fit the instructions, directions, or expectations of Chairman Jaczko?
- iv. Please explain whether, as general counsel, your role was to provide legal counsel to the NRC as an institution, or to provide legal counsel for the Chairman? In other words, in your view, does the NRC general counsel exist to serve the NRC as an institution or is the role intended to serve the Chairman?

Answer

- i. When I wrote and transmitted the memo, I was at home because of a personal obligation and had not had a chance to personally communicate with the Chairman’s staff regarding whether the memo had addressed the issue of concern to them and was in an acceptable format.
- ii. No, other than the request to be provided a memorandum on the subject.
- iii. No. I sought to write a legal memorandum that reflected my best understanding of the governing legal principles, the NRC’s institutional structure, and agency experience.
- iv. The General Counsel reports to the Commission and provides legal advice to the Commission and to its staff. In some circumstances, the request for counsel may come from the Chairman, as was the March 17, 2011 memo, with respect to his duties and powers and in other circumstances individual Commissioners may request directly the views of the General Counsel with regard to their responsibilities as well as particular issues facing the agency. I was conscientious as General Counsel in ensuring that all Commissioners were provided the legal advice and support that they needed and requested.

34. Chairman Jaczko testified before the Senate EPW Committee on June 16, 2011, and was quizzed by members about his exercise of emergency powers. Senator Jeff Sessions focused particular attention on the use of emergency powers and the Chairman’s failure to provide a timely and complete report, as required by law, following the conclusion of his use of those powers. In a letter dated September 14, 2011, Chairman Jaczko provided Sen. Sessions with a report—which was approximately six months after the Chairman had begun exercising emergency powers. Do you believe that Chairman Jaczko complied with the legal obligation to provide a “complete and timely report to the Commission on the actions taken during the emergency,” as required by law? Please explain.

Answer

If one interprets the Reorganization Plan to require a report in the circumstances surrounding the Fukushima Daiichi accident, Chairman Jaczko did meet the reporting obligation.

35. According to the 2011 OIG report, you “acknowledged to OIG that expansion [of emergency powers] to non-licensees could be debated.” However, it seems that you repeatedly asserted that Chairman Jaczko’s exercise of emergency powers was “consistent with the powers he has under the statute.” In a March 8, 2012, letter from you to then-Rep. Edward Markey, you contended that Chairman Jaczko’s actions post-Fukushima were “consistent with the emergency authority granted under the Reorganization Plan [of 1980].... In addition, you argued in the letter that

Jaczko was not “required to invoke those [emergency] powers” because he had independent authority for all actions he took in that regard. Please explain whether you continue to believe, as a legal and policy matter, that the exercise of emergency powers by Chairman Jaczko post-Fukushima was appropriate and lawful under the circumstances.

Answer

I believe the actions of which I was aware and for which I provided legal advice regarding his actions were within the scope of his duties as Chairman as indicated in the letter to Rep. Markey. I was not aware, for example, of any actions where he would not have had sole authority to act (e.g., by issuing an order to a licensee).

36. A recent article in E&E News entitled, *Waxman Aide, former general counsel in nominations mix* (June 27, 2014), states: “Burns told congressional committees two years ago that Jaczko was within his authority to keep his colleagues out of an emergency operation center established in the wake of the 2011 earthquake and tsunami that devastated a nuclear plant in Japan.” Do you continue to believe that Chairman Jaczko acted appropriately and within his legal authorities by keeping other commissioners out of the NRC emergency operation center following Fukushima? Please explain.

Answer

The cited news article does not accurately characterize my views or advice I gave on the question of emergency authority.

37. Please describe your understanding of the NRC’s backfit rule and its role in NRC licensing and regulatory functions.

Answer

The backfit rule applies primarily to the analysis of new requirements being considered for imposition on existing licensees. The rule is intended to provide a disciplined process for considering whether new requirements are necessary to meet minimal safety standards or otherwise provide substantial additional protection.

38. Are you familiar with the NRC guidance to staff on the use of Probabilistic Risk Assessment (PRA)? What is your view of PRA and how it should be used in NRC licensing and regulatory functions?

Answer

I have only a general familiarity with current guidance but, if confirmed, I would ensure that I have a necessary understanding of the staff’s use of PRA. I am aware of the greater use and reliance on risk insights developed through PRA analyses and its contribution to NRC’s risk-informed regulatory framework. PRA can be a useful tool to help focus the attention of the regulator and industry on the most important contributors to risk.

39. The NRC is considering ways to address the cumulative effects of regulations. Please explain whether you believe there are legitimate concerns regarding the cumulative effects of NRC rules, orders, and other agency directives and actions on licensees. Please explain your view of how the NRC should evaluate and address these cumulative effects.

Answer

NRC’s focus on cumulative effects was at a beginning stage when I left the NRC in 2012. To the extent that the evaluation of consideration of cumulative effects can improve the coherency and

consistency of NRC regulations, it would seem to be a useful tool. If confirmed, I would plan to ensure I have a better understanding of the current state of NRC's focus on cumulative effects.

40. In a recent vote by the NRC on filtered vents, Commissioner Magwood expressed concerns with approaches to regulation that rely upon *qualitative* (as opposed to *quantitative*) factors. He described such an approach as an "extraordinary step" that "goes well beyond previous [NRC] guidance..." He also noted that Chairman Macfarlane's analysis in that vote could be used to "justify essentially any regulatory change." What is your view of the proper use of qualitative factors in regulatory decision-making by the NRC?

Answer

I am not familiar with Commissioner Magwood's particular vote, but if confirmed, I would ensure that I become familiar with the issue. As a general matter, regulatory decisions may reflect a variety of relevant consideration including quantitative analysis and other scientific and engineering evaluations. This does not exclude qualitative analysis in decision-making, but I would want to examine the concerns Commissioner Magwood had as well as the views of other Commissioners in understanding the concerns over the proper role of such analysis.

41. Public notice and comment, which provides full involvement for all stakeholders, is a critical component of good governance at any agency, but especially the NRC which has to deal with such highly complex and technical issues. Under what circumstances should the NRC forego rulemaking in favor of a direct order?

Answer

Generally, orders have been used where regulatory action is directed to a particular licensee or class of licensees and where there is a need for prompt action. Those directly affected by an order have a right to be heard on the order's imposition, and in some circumstances the agency has provided advance comment opportunities on the scope and content of an order at its discretion before the order is issued. Essentially the use of a rule or order is within the discretion of the agency.

42. NRC is establishing procedures to govern hearings on potential claims that acceptance criteria (part of the inspections, tests, analyses, and acceptance criteria, or "ITAAC") in the combined license for a nuclear reactor have not or will not be met. *See* 70 Fed. Reg. 21,958 (April 18, 2014). The comment period for the proposed procedures ended on July 2, 2014. These procedures will be critical to enabling the start-up of new reactors.

- i. Do you agree that it is important to review stakeholder input when finalizing these procedures?
- ii. Do you also agree that it is important to finalize these procedures in a timely manner?
- iii. To avoid unreasonable delays in the hearing process, stakeholders have suggested ways to ensure that "claims of incompleteness" and other relevant components of the hearing process are appropriately addressed. For example, it has been suggested that the final hearing procedures should specify the kinds of information that will be needed in order to assess whether an ITAAC closure notification (or uncompleted ITAAC notification) is incomplete. This is important to ensure that licensees and other stakeholders are able to assess whether "claims of incompleteness" are potentially valid or are appropriate for agreed-to resolution outside the hearing process. Do you agree that it is important to ensure that the ITAAC hearing procedures are workable and efficient?

Answer

- i. Evaluating stakeholder input would be appropriate.
- ii. Yes.
- iii. I agree the procedures should be workable and efficient and reflect an assessment of the views of interested stakeholders.

43. In the State of the Union in January 2010, President Obama stated that the United States should be “building a new generation of safe, clean nuclear power plants in this country.” Do you agree?

Answer

If confirmed as an NRC Commissioner, my role would not be to promote a particular energy policy. My responsibility would be to ensure that the NRC has an appropriate regulatory framework that ensures safety and security when considering potential new applications and that it reaches timely decisions on applications that it receives.

44. In February 2014, Secretary of Energy Ernest Moniz stated that “construction of new nuclear power facilities … [is] an important part of our all-of-the-above approach to American energy as we move toward a low-carbon energy future.” Do you agree?

Answer

If confirmed as an NRC Commissioner my role would not be to promote a particular energy policy. That said, I acknowledge that nuclear power facilities have advantages from the perspective of low-carbon emissions.

45. At a roundtable discussion for the Energy Bar Association, you discussed the history of reactor licensing by detailing the process in place before the Part 52 reforms were adopted. You explained that the pre-Part 52 process was “lack[sing] in standardization [which] deferred resolution of important safety issues until plant construction was well underway [causing] a seemingly inefficient and duplicative review and hearing process.” Part 52 reforms have certainly improved the licensing process. Would you support additional reforms to help ensure a more timely, safe, and cost-effective process for licensing commercial nuclear reactors?

Answer

If confirmed, I would open to consider ideas that would improve the licensing process.

46. In June of 2012, you wrote an article titled “After Fukushima—The Challenge for Nuclear Power,” where you stated that “we should not lose sight of opportunities to improve the coherency of the framework for nuclear regulation.” Could you share some examples of opportunities that might exist for improving the NRC regulatory framework?

Answer

My 2012 article focused on the initial response to the Fukushima Daiichi accident and the focus on ensuring safety in the face of severe natural phenomena, improving emergency response capability, and integrating various lessons learned from operating experience. This continues to be a focus as post-Fukushima requirements are implemented. As I have indicated in my response to other questions, I think due consideration should be given to cumulative effects to minimize duplication and improve integration of regulatory requirements for effective management and assurance of safety.

47. The *NRC Reorganization Plan Codification and Complements Act* (H.R. 3132 by Rep. Lee Terry; S. 1519 by Sen. David Vitter) is legislation to improve the functioning of the NRC. This

legislation would, among other things, clarify the authority of the chairman in emergency situations and ensure equal access to information for all NRC members.

- i. In light of the difficulties experienced during the tenure of Chairman Jaczko, as described in the 2011 OIG Report and House Oversight Committee reports, do you agree that legislation clarifying the functions, powers, and responsibilities of the chairman and the commissioners would be beneficial?
- ii. This legislation requires the chairman to notify the other commissioners, two congressional committees, and the public “not later than 24 hours after” the chairman declares a specific emergency exists. In light of modern means of communication, do you believe this requirement would impose an inappropriate burden on the chairman in the context of a real emergency?

Answer

- i. In general, I believe that the existing Reorganization Plan No. 1 of 1980 already addresses the key division of responsibility between the Chairman and Commissioners, notwithstanding tensions over the application of the provisions that may have arisen over the years. Although I have general familiarity with the bills, I have not had a chance to consider the implications of all their provisions, but I am certainly willing to discuss the bills with you and your staff.
- ii. Good communication in emergency situations is important. Although I do not believe that some form of reporting is in itself objectionable, I would want to understand the implications from the perspective of NRC chairmen and NRC operations personnel to such a requirement. To the extent such reporting is required, the circumstances to which it applies should also be well defined.

48. On May 19, 2014, the Commission acted on an NRC staff recommendation regarding three specific recommendations arising out of the Near-Term Task Force Report’s suggestion to review whether the NRC should establish a “logical, systematic, and coherent regulatory framework for adequate protection that appropriately balances defense-in-depth and risk considerations.” The three staff recommendations were approved by the Commission even though the NRC staff also acknowledged that these changes “are not needed to maintain safety of nuclear power reactors.”

- i. Do you agree with the action taken by the Commission in this vote?
- ii. Do you believe that the NRC should impose costly new requirements for nuclear reactors even if the new requirements cannot be shown to enhance safety to a measurable degree?
- iii. In her vote on this matter, Commissioner Svinicki notes that NRC cost estimates associated with new requirements have “understated reality by orders of magnitude.” Do you believe it is important that NRC estimates of the costs on industry associated with implementation of new requirements are accurate? If so, what efforts do you believe may be necessary to ensure more accurate cost estimates?

Answer

- i. I am not familiar with that particular paper and have not had time to read it before submitting the answers to these questions. If confirmed, I would ensure that I familiarize myself with the paper and the issues raised in it and any matters still requiring Commission resolution.
- ii. Generally, I believe that new requirements should be soundly based in the need to ensure adequate protection or provide additional safety benefit as provided in the backfit rule.

iii. NRC should rely on reliable cost estimates in conducting its analyses. I would need to understand in greater depth the concern with current practices and, if confirmed, I would commit to do so in assessing whether any changes are needed.

49. On April 24, 2014, the Commission voted on a policy paper by NRC staff pertaining to financial assurance requirements for merchant plants. Do you agree or disagree with the Commission's determination in that matter?

Answer

I am not familiar with that particular paper and have not had time to read it before submitting the answers to these questions. If confirmed, I would ensure that I familiarize myself with the paper and the issues raise in it and any matters still requiring Commission resolution.

Questions from:

Senator Jim Inhofe

1. Many of the regulations being considered by the NRC today are in response to the Fukushima disaster in Japan, but I think one thing that often gets lost in the discussion is how different our cultures and regulatory structures are.

In many ways, our system is already well protected against an accident like that happening here at home. In some areas it has to do with who can make decisions...in others it is because of changes we made to our regulatory structure following 9/11.

Can each of you discuss how the Japanese and U.S. cultures and regulatory models are different, such that the U.S. nuclear fleet is less vulnerable, at the base level, to something like Fukushima happening here?

Answer

As reflected in the official reports of the Japanese government on the investigation of the Fukushima Daiichi accident, the organizational and reporting structure of the Japanese regulator did not ensure its independence and existence of technical capabilities in some areas. In creating the NRC in 1974 as a separate agency, the Congress enhanced the independence of the U.S. regulation. Lessons-learned from the Three Mile Island accident in 1979 also served to improve the capabilities and competence of the NRC and provided a focus on learning from operational experience, among other things. The NRC has also established a strong technical capability in its staff, complemented by additional contractual support that is subject to rigorous conflict of interest rules. NRC needs to be vigilant in maintaining its capability as a regulator and its technical capacity. While there may be differences between the U.S. and Japanese framework as it existed at the time of the Fukushima Daiichi accident, in my view, there are insights from the accident that can help NRC and industry ensure safety of the plants in the United States.

2. The NRC recently voted to approve its waste confidence rule, which was reassuring to me. This decision paves the way for the NRC to consider new licenses and extensions of existing licenses. Can you both confirm that all of the applications for extending existing licenses will be approved by the NRC?

Answer

As reflected in the Commission's order, the Commission lifted the suspension of further consideration of license applications affected by the Commission's continued storage rule (previously known as waste confidence). I would expect that the remaining matters in pending license applications would now be addressed through the NRC's licensing process and final determinations made.

Questions from:

Senator John Barrasso

1. The Nuclear Regulatory Commission (NRC) is charged with regulating in situ uranium recovery. But recently we have seen EPA take a more aggressive role in evaluating in situ uranium projects. EPA has seized on its authority to approve aquifer exemptions as a back door

way to regulate the uranium mining industry. This is troubling as EPA lacks expertise on in situ uranium recovery.

Question: How can the NRC work more closely with EPA to reduce redundancy in the regulatory process and ensure projects are evaluated on a timely basis?

Answer

If confirmed, I would consult with the NRC staff to understand the current framework and the issue of potential overlapping jurisdiction and see if there are opportunities to minimize overlap.

2. EPA is also attempting to regulate lined evaporation ponds at uranium recovery facilities. This is completely duplicative of what NRC does with respect to its licensing authority under the Atomic Energy Act.

Question: If confirmed, what steps will you take to reduce this type of duplication that leads to unnecessary delays and puts additional burdens on the uranium mining industry?

Answer

If confirmed, I would consult with the NRC staff to understand the current framework and the issue of potential overlapping jurisdiction and see if there are opportunities to minimize overlap.

3. NRC's timely review of license applications is critical to the success of America's uranium mining industry. NRC has recently sent uranium recovery applicants formal notifications stating that the timely completion of license applications may be impacted due to insufficient resources.

Question: Would you please explain how the process for licensing can be impacted when the industry is subject to a full cost-recovery fee structure in support of NRC activities?

Answer

I am not familiar with the particular circumstances, but if confirmed I would look into the issue.

Questions from:

Senator Jeff Sessions

1. The Tennessee Valley Authority has announced they are on-time and on-budget to complete the first new nuclear unit in the U.S. in late 2015 at Watts Bar. I recently had staff participate in a tour of the site and report on the progress being made. Do you currently have plans to see this site in person since one of your first major actions on the NRC will be to vote for or against licensing of this plant? Will you commit to visiting the plant before the NRC votes on licensing the plant?

Answer

Although I have not made any plans to visit any facility at this time, I am prepared if I am confirmed to visit the Watts Bar site.

2. Do you agree that the NRC's existing regulations governing decommissioning of nuclear reactors are adequate for the safety of the public?

Answer

From my understanding, NRC's regulations comprehensively address the radiological protection criteria necessary to safe conduct of decommissioning activities and the eventual release of the site from regulatory control. I note that some questions have been raised about the timing and efficacy of and the process for the NRC's consideration of exemptions for sites under decommissioning from requirements normally applicable during plant operations. If confirmed, I would want to explore these issues and understand them.

3. The NRC has established rules, policies, and guidelines governing the release of NRC-related information. These rules, policies, and guidelines – like those of any independent Commission like the NRC – may change over time. Do you agree to abide by those rules, policies and guidelines that are currently in effect? Do you agree to not release NRC documents or information to third parties (including the media, members of Congress or their staff, environmental groups, or other entities) except as otherwise required by law and NRC rules, policies, and guidelines?

Answer

If confirmed, I intend to follow applicable law and implementing rules and policies applicable to information disclosure, including section 303 of the Atomic Energy Act and the Freedom of Information Act.

4. Have you made any commitment to release any information to any member of Congress or their staff if you are confirmed?

Answer

I have not made a particular commitment to any individual member of Congress or their staff to release information. If confirmed, I will act in accordance with governing law.

5. Under the Nuclear Waste Policy Act, Yucca Mountain is the site designated for the nation's geologic repository. Do you agree or disagree? Please explain.

Answer

I agree that the Nuclear Waste Policy Act designates the Yucca Mountain site for site characterization and evaluation for construction of a high level waste geologic repository.

6. The NRC has established rules, policies, and guidelines for responding to Congressional inquiries. Will you follow those policies as long as they are in force?

Answer

If confirmed, I plan to follow the applicable procedures, consistent with governing law.

7. Have you met with or spoken with Senator Harry Reid?

Answer

On one occasion, I was part of a meeting that included Senator Reid several years ago when I was NRC General Counsel. I have not met or spoken to him since that time.

Questions from:

Senator Mike Crapo

1. Do you view growing our nation's nuclear fleet as imperative to a successful national energy strategy? From a perspective of NRC policy, what are the impediments to achieving this growth?

Answer

If confirmed as an NRC Commissioner my role would not be to promote a particular energy policy. My responsibility would be to ensure that the NRC has an appropriate regulatory framework that ensures safety and security when considering potential new applications and that it reaches timely decisions on applications that it receives.

2. What important actions do you think need to be taken from a regulatory perspective to ensure long term sustained operations of the currently licensed nuclear power fleet?

Answer

If confirmed as an NRC Commissioner my role would be to ensure that the NRC has an appropriate regulatory framework that ensures safety and security in the operation of facilities. That framework and those requirements should ensure that necessary requirements are well founded and coherent.

3. What substantive regulatory changes may be required to encourage maturation of a small modular reactor industry? Construction of design certified large light water reactors?

Answer

I understand that the NRC staff has done some work identifying such matters and if confirmed I would ensure that I understood the gaps in the current framework to ensure timely and complete review of potential SMR applications. I would also want to understand the lessons from the recent experiences with the licensing process under Part 52 for design certifications and combined licenses

4. What substantive regulatory changes may be required to the current license extension criteria and process to facilitate sustained availability of the current fleet?

Answer

I am not currently aware of any particular changes warranted to the license renewal process, but if confirmed I would look at that issue.

5. Do you believe the NRC regulatory process inappropriately inhibits innovation in the United States? What steps should be taken to warrant against potential inhibition?

Answer

I am not familiar with any particular concerns, but if confirmed I would be willing to hear the views of interested stakeholders.

6. Companies such as Terra Power are trying to deploy new reactors that do not use traditional light water reactor technology. The Nuclear Regulatory Commission's lack of a framework to license non-light water reactor technologies is cited as an impediment to deployment in the US. Indeed, Terra Power, which is supported by Bill Gates, is looking to build its first reactor in China because

of the NRC's licensing process. Should the NRC adapt its licensing process to be responsive to new technologies?

Answer

I believe that the NRC should be prepared to undertake its regulatory responsibilities for new technologies. If confirmed, I would ensure that I understood the likelihood and timing related to NRC's consideration of such technologies.

Questions from: Senator Roger Wicker

1. On August 26, 2014, the NRC approved the Continued Storage Rule (CSR) and Generic Environmental Impact Statement (GEIS), which had been prepared by NRC staff following a ruling in 2012 by the D.C. Circuit. This rule is of particular interest to me as the Commission had stayed licensing decisions until this rule was finalized. As you may or may not be aware, there is a nuclear plant in my state – the Grand Gulf Nuclear Station – that currently has a license renewal application under review at the NRC. The passage of this rule and the Commission decision to allow licensing decisions to go forward will mean the decision on this review can be finalized.
 - i. Would you have voted in support of the CSR/GEIS, if you were already a member of the Commission? Please explain.
 - ii. In his vote, Commissioner Ostendorff concludes: “I am confident that the agency has appropriately responded to the DC Circuit Court of Appeals’ remand and has fulfilled its NEPA obligation for continued storage of spent nuclear fuel.” Commissioner Ostendorff is an attorney. He also served as counsel and staff director for the House Subcommittee on Strategic Forces. As part of a distinguished Navy career, he commanded a nuclear attack submarine. He also holds an engineering degree and served as the Director of the Committee on Science, Engineering and Public Policy at the National Academies, and as the Principal Deputy Administrator at the National Nuclear Security Administration. Do you also have confidence that the NRC has “appropriately responded” to the requirements of the D.C. Circuit ruling from 2012?

Answer

- i. Although I am familiar with the circumstances that led to the adoption of the new rule, I have not had an opportunity to review the text of the final rule and thus unable to inform you whether I would have had particular comments on the final text. If confirmed, I will become familiar with this matter.
- ii. Again, I have not had an opportunity to review the final rule’s text, but from my past experience, I would expect the agency to have undertaken a serious effort to address the issues and come to an appropriate resolution of the matters addressed in the rule. If confirmed, I will become familiar with this matter.

2. The NRC is guided by a set of principles of good regulation – which are independence, openness, efficiency, clarity, and reliability. Can you explain how you will adhere to each of these principles as a Commissioner and how these will guide your decision making?

Answer

If I am confirmed, I think keeping these principles in the forefront in executing my duties as Commissioner, in making decisions, and in communicating with fellow Commissioners, the NRC staff and stakeholders is the best way to incorporate these values.

3. Are you familiar with the NRC rulemaking process? Do you think timeliness of decisions and matters before the Commission is important?

Answer

Yes, I am familiar with the process. I do believe it important that the Commission reach timely decisions on the matters that come before it.

Questions from:

Senator Deb Fischer

1. **Cameco's Crow Butte Uranium Mine**

As we discussed at the hearing, NRC's timely review of license submittals is critical to the success of our domestic uranium mining industry. At present in Nebraska, there are multiple re-licensing proposals and new license applications that have, to date, taken seven years to review. I have written to the Commission to encourage swift action in order to protect the economic environment of the communities that have relied for decades on these operations—operations that safely and responsibly produce critical fuel for our nation's domestic nuclear energy industry. In response, the Commission has stated that the reviews are continuing, but that it may be another full year before a final decision is made. Should you be confirmed, will you commit to familiarizing yourself with the situation regarding the pending license decisions in Nebraska and following up with my office within 30 days of your confirmation to discuss the delays and work to expedite the decisions?

Answer

Yes, if confirmed, I would familiarize myself with the matter and discuss the concerns with your office.

2. **Rulemaking**

On May 19, 2014, the Commission acted on an NRC staff recommendation regarding three specific recommendations arising out of the Near-Term Task Force Report's suggestion to review whether the NRC should establish a "logical, systematic, and coherent regulatory framework for adequate protection that appropriately balances defense-in depth and risk considerations."¹ The three staff recommendations were approved by the Commission even though the NRC staff also acknowledged that these changes "are not needed to maintain safety of nuclear power reactors."

- i. Do you agree with the action taken by the Commission in this vote?
- ii. Do you believe that the NRC should impose costly new requirements for nuclear reactors even if the new requirements cannot be shown to enhance safety to a measurable degree?
- iii. In her vote on this matter, Commissioner Svinicki notes that NRC cost estimates associated with new requirements have "understated reality by orders of magnitude." Do you believe it is important that NRC estimates of the costs on industry associated with implementation of new requirements are accurate? If so, what efforts do you believe may be necessary to ensure more accurate cost estimates?

Answer

- i. I have not had an opportunity to review the paper or the Commission's vote but if confirmed I would do so.
- ii. I agree with the general proposition that new requirements should have a safety benefit.
- iii. I agree that cost estimates should be reliable to the extent that they used in regulatory analyses. If confirmed, I would seek to understand the agency's current practices and try to determine where improvements could be made.

¹ NRC Voting Record, May 19, 2014, <http://www.nrc.gov/reading-rm/doc-collections/commission/cvr/2013/2013-0132vtr.pdf>.

Senator BOXER. Thank you.

We have dwindled down to a precious few, as they say, but we now see Senator Sessions back so we will have a little more excitement.

Let me say to both of you, first of all, thank you so much for bringing Chris here. I am sure his proud knows no bounds in carrying on the tradition of family service. I know Gus has many more interesting things to do than to be here today. I just want to say I appreciate the family values that you bring to your world and to work. We appreciate it.

Instead of asking you this particular open-ended question, I am going to ask you to please write it today. The question is, can you briefly write about how your experience and qualifications will contribute to your ability to serve as an NRC commissioner in a very objective way and how your experience will lead you to fostering a collegial atmosphere?

We all know there was a period of time, different people on this committee blame other people for it but that is not the way, we want to make sure that we can disagree and not be disagreeable because there may be some times when there is disagreement.

We have that on this committee. Senator Inhofe and I are very dear friends; Senator Sessions and I have a very warm relationship even though we disagree. That is important. If you could write that to us, brief, I don't need a whole biography, just an answer and that would be great.

I am sorry that Senator Barrasso had to leave. He did bring up an issue that Senator Reid was interested in this. So am I. I don't want to surprise anyone when I say this but I don't think it comes as a big surprise that a Majority Leader of either party is interested in what appointments the President makes.

You can go all the way back to the original Majority Leaders because they set the agenda. If they feel uncomfortable with the appointments, it is uncomfortable for them.

I just want to say whether Mitch McConnell was the Majority Leader, Harry Reid, Bob Dole, Tom Daschle, just in the time I have been here we have had several from both parties, they all cared about who the commissioners are. It is not a big surprise. Majority Leaders care.

That is the system. If we don't like the system, we can take away the power from Majority Leaders to have any opinion and to schedule. Frankly, that is the one power they have, to schedule. That is a bigger issue than just saying Senator Reid cares about this. Of course he cares about this for obvious reasons in his State.

We all care about our States first and foremost. That is the way it is. I wanted to really make that point.

Recently, the public learned that NRC's former senior inspector at the Diablo Nuclear Power Plant in California told NRC unequivocally that the Diablo Canyon is not in compliance with the seismic safety requirements of its license.

I am not going to ask you for details because you don't know any of the details. I just want to ask you in general, as a general matter, do you believe that reactor operators have to comply with the requirements specified by the NRC in their operating licenses?

Mr. BARAN. Yes.

Mr. BURNS. Yes.

Senator BOXER. I think that is important because NRC makes the decision and then I think they should enforce it.

The other question has to do with the decommissioning of a plant that we have, the San Onofre. So many millions of people live in the area and we have an issue that deals with the operator asking to be relieved from certain safety requirements.

I am not asking your opinion on it. If you are successful, would you be open to meeting with me and others and talking about the safety of the decommissioning. Would you be willing to meet with me as I would meet with all the commissioners?

Mr. BARAN. Absolutely.

Mr. BURNS. Certainly.

Senator BOXER. That is good.

Last has to do with the withholding of documents which I think is critical. We are going to ask you before you leave if you will make these documents available to us? I am sure you will answer yes, everyone does, but meanwhile, we have a real problem. We cannot get documents. The NRC has told me there is a separation of powers and this committee doesn't deserve certain documents.

I am going to ask you each to answer. Do you believe that NRC's oversight committees should get information they ask NRC to give them? In other words, should our committee and any other committee of Congress that asks you, should we get those documents pursuant to well established congressional oversight authority and will each of you work with me and others on the committee to improve NRC's responsiveness to Congress, whether it is about the budget, a particular facility or any question. We have different questions. Will you work with us and have openness because I have not seen that coming from the Commission lately?

Mr. BARAN. Yes, Madam Chairman. I make that commitment to you.

Senator BOXER. Thank you.

Mr. BURNS. Yes, Madam Chairman. I will work with you. In my past experience, I have worked through a lot of issues and sometimes tough document issues with committees. In my view, the Congress has an important oversight role and we should try to help in that role.

Senator BOXER. Thank you.

Senator INHOFE.

Senator INHOFE. Thank you, Madam Chairman.

I say to both of you gentlemen, in my opening statement, I talked about my concern over the cumulative effect of costs to industry, to providers, to stakeholders, to the public of all these rules. When we complained about this, as I said in my opening statement, about the EPA that it is more of an adversarial relationship, that is one that they have a political agenda.

You guys should not. I think this is something that rather than forcefully say we need to have this, that you should be doing it anyway. It is my understanding there are some 50 rules or regulations now that would be in some level of progress. I certainly do not understand where we are with these.

On these and any others, I would ask for your commitment to come up with the costs, with the cumulative effect of these regulations.

Mr. BARAN. Thank you, Senator.

My understanding is that the NRC staff is currently looking at the cumulative effects question and has had a series of public meetings on that topic. If confirmed, I look forward to reviewing their findings when they are submitted in the coming months.

The NRC's focus is on nuclear safety but there are built-in regulatory mechanisms to make sure that the costs and benefits of requirements being considered are fully evaluated and that is the right approach.

Senator INHOFE. We all agree that your function is to provide and ensure safety. However, that does not happen in a vacuum. Would you make a commitment insofar as that is concerned, Mr. Burns?

Mr. BURNS. Yes, I will commit to looking at that issue in cooperation with my fellow commissioners. I have prior experience with the backfitting rule. As I was leaving the agency in 2012, the idea of doing a more focused effort to consider cumulative effects was under consideration. I will commit to doing that.

Senator INHOFE. That is good.

When you try to explain this to someone who is outside of Washington, they don't understand it. I have tried. I am at fault because I was the chairman at that time of the subcommittee that jurisdiction of preparing for a major increase in nuclear activity on behalf of the NRC that they get themselves prepared for that with the staff.

They went from 1,500 to 3,800 people. Let me think about that. That is more than double, 1,500 to 3,800 people. The budget actually tripled from \$300 million to \$1 billion. Now, instead of having the anticipated 1,700 construction and operating licenses, we have 2.

This should be a no-brainer. It is not your fault but you are faced with this now. I want to see some kind of response to this. Is one of the responses to bring it back down to the previous levels before in terms of personnel and costs? What do you think, Mr. Baran?

Mr. BARAN. The NRC staff is taking a look at this very issue.

Senator INHOFE. Wait a minute. You are having the staff look at the issue as to themselves, the justification of staff. I am not sure that is a real objective process, is it?

Mr. BARAN. My understanding is they are taking a 5-year look and trying to make sure that resources, including personnel, are matched in a good way with the workload. That assessment is going to be presented to the Commission.

Senator INHOFE. If that occurs, there are jobs for 5 years then, is that what you are saying?

Mr. BARAN. It is a policy issue that would be decided at the Commission level with the input of the staff currently taking a look at the staffing levels and how that matches up.

Senator INHOFE. Mr. Burns?

Mr. BURNS. Senator, I think, as Mr. Baran noted, I think the Commission's responsibility is to take a hard look at what the staff valuation. My experience is staff always is providing to the Com-

mission proposed budgets through the budget cycle and the budget processes.

I agree with you that you have to take a hard look at what the agency's priorities are and the work it has on its plate and ensure it is focused on the safety mission. To the extent there are licensing issues before it, it should ensure those are adequately addressed.

My commitment to you is I am willing to take that hard look to assure the agency's resources are focused in the right way.

Senator INHOFE. Madam Chairman, my time has expired but my last question has to do with Fukushima. Should I go ahead and do that or save that for another round? What is your recommendation?

Senator BOXER. We are not going to do another round so go right ahead.

Senator INHOFE. A lot of the regulations being considered by the NRC today are in response to the Fukushima disaster in Japan. I think one thing that often gets lost in the discussion is how different our cultures and regulatory structures are. In many ways our system is always well protected against an accident like that happening here at home.

In some areas, it has to do with who can make the decision and in other areas, it has to do with our experience from 9/11.

Could each of you discuss how the Japanese and the U.S. cultures and regulatory models are different? I mentioned this to both of you in the office, but it needs to be in the record. Would you do that?

In other words, where are we that it is different from Fukushima and the regulatory system that was found at that time in Japan?

Mr. BURNS. Senator, as you and I discussed yesterday, very quickly, there are two things. One, I think the U.S. learned the lessons of the importance of a strong regulator and a separate regulator in the 1970's, both when the NRC was created out of the AEC, as Senator Markey referenced, and also the lessons coming out of Three Mile Island.

In terms of what I will call the institutional structures, I think that was very important to the United States.

The second thing I would say is, as you note, there are a number of things the U.S. and the NRC did after 9/11 that I think had benefits across the board. Some of those things were not adopted in Japan. I think we benefited from that.

There are things that the agency has under consideration. I don't know the particular status of them, but those are things I think we need to look at to make sure the commitments the agency made to follow through and make decisions on are done.

I would agree with you. I think there are some things that we were in good stead and it is assured that those things are strong and if need be, to be built upon.

Senator INHOFE. Do you agree with that, Mr. Baran?

Mr. BARAN. Yes, I do.

Senator INHOFE. Just for the record, you might send me the specifics you are talking about which we probably already have but I want them coming from you. Would you do that?

Mr. BARAN. OK.

Mr. BURNS. Certainly.

Senator INHOFE. Thank you, Madam Chair.

Senator BOXER. Thank you, Senator Inhofe.

Senator MARKEY.

Senator MARKEY. Thank you.

I was able to insert language into last year's omnibus appropriations bill that reversed NRC's efforts to withhold information from Congress and restore the old document policy. I am disappointed to say that the NRC is currently breaking that law.

That is because NRC is withholding documents that I have requested on a range of important issues, including the circumstances under which NRC allowed Chinese nationals unescorted access to Westinghouse nuclear reactors at the very same time that other Chinese spies were hacking into Westinghouse.

If you are confirmed, do each of you commit to following the law which calls for NRC to provide non-public documents to members of NRC's oversight committees and members who are asking for information about reactors located in their States or near their States?

Mr. Baran?

Mr. BARAN. The 2011 internal Commission procedure which you earlier referred to is the hold procedure. It ensured that documents were available not just to the committee but to individual members of the committee, to Senators or House members who had facilities in their districts or States.

I believe that was the right policy. The appropriations bill makes it clear that is the policy that is now in effect.

Senator MARKEY. Mr. Burns?

Mr. BURNS. I was familiar with working under the old procedures and I am comfortable working under those old procedures.

Senator MARKEY. Thank you.

Fukushima reminded us of the devastating effect of a nuclear reactor meltdown. Radiation from the accident was detected over 1,000 miles away. Land contamination continues to keep tens of thousands of people from returning to their homes. Cleanup cost estimates continue to rise with industry admitting it will cost over \$100 billion.

Meanwhile, in the United States, we have packed so much radioactive waste into spent fuel pools that even NRC studies conclude that spent fuel fires could spread as much contamination as a meltdown of an operating reactor.

The spent fuel pools at Pilgrim Nuclear Power Plant, for example, is currently holding nearly four times the amount of waste it was designed to hold.

According to NRC and other studies, if the water were to be drained from a spent fuel pool causing the spent fuel to heat up and catch fire, the consequences could be worse than a nuclear meltdown at an operating reactor.

Do you agree that the more spent fuel is stored in these pools, the faster it could heat up and ignite if the pool's water was drained? Mr. Baran?

Mr. BARAN. Yes.

Senator MARKEY. Mr. Burns.

Mr. BURNS. Certainly the issue has to be looked at, whether or not in terms of the capacity of the pools and particularly what I will call the relative, not fresh fuel, but how recently it has been in the reactor. You certainly need to look at that to assure that the pools are safe or take measures otherwise.

Senator MARKEY. Isn't it also true that the more fuel which is in the pool, the greater the potential consequences if a spent fuel fire were to occur? Mr. Baran?

Mr. BARAN. Yes, I believe that is correct.

Senator MARKEY. Mr. Burns.

Mr. BURNS. Again, consistent with my last answer, again, I think it depends on how recently the fuel has been there but it is something you need to look at and be concerned about.

Senator MARKEY. Isn't it true that storing the fuel in dry casks storage containers would remove the need for pumps and other equipment needed to keep the pools full of water and would also greatly decrease the likelihood of a spent fuel fire? Mr. Baran?

Mr. BARAN. The dry casks are passive systems, so you wouldn't require pumps and other devices to have them operate.

Senator MARKEY. Mr. Burns.

Mr. BURNS. I would agree that they are more passive systems.

Senator MARKEY. A recent NRC study that concluded that the spent fuel could be stored in spent fuel pools indefinitely only fully evaluated the risk of a major earthquake, ignoring other large scale disasters and terrorist attacks. They said the probability of other events is so low that they don't even need to evaluate them.

Do you agree that it is possible for other large scale disasters, such as a major hurricane or ongoing terrorist attack, to both cause damage to spent fuel pools and make it more difficult to quickly get necessary equipment to a site to repair the damage? Mr. Baran?

Mr. BARAN. I would agree that as a general matter, if it is a natural disaster situation, that makes response more difficult for spent fuel pools and other aspects of the facility.

Senator MARKEY. Mr. Burns?

Mr. BURNS. Generally, you have to take account of the types of potential threats that you have, whether that is a security threat or a range of natural disasters that may be potentially experienced at that site. I agree that you need to look at those things.

Senator MARKEY. That is why I recently introduced the Dry Cask Storage Act which gives plants 7 years to remove all of the waste that can be removed from the pool and put it into safer dry cask storage, provides funding to help offset the cost and increases the size of emergency planning zones around plants that choose not to remove the waste from their pools.

Thank you, Madam Chairman.

Senator BOXER. Senator, do you need more time? Because we are finishing up the round. I will give you another minute or two like I gave Senator Inhofe. I will do that for all colleagues.

Senator MARKEY. Thank you.

A recent National Academy of Sciences report said that the NRC should actively seek out and act on new information about hazards that have the potential to effect nuclear plant safety, including extensive flooding and geomagnetic disturbances which could affect large portions of the electric grid.

The report also pointed out that extreme events like these can produce severe accidents at nuclear plants that damage reactor cores and stored spent fuel.

Do you agree that the NRC should, as a general rule, evaluate a full range of realistic threats to reactors and spent fuel pools? Mr. Baran?

Mr. BARAN. Yes.

Mr. BURNS. Yes.

Senator MARKEY. Thank you, Madam Chair.

Senator BOXER. Thank you, Senator.

Senator SESSIONS.

Senator SESSIONS. Thank you.

Mr. Burns, you have been counsel at the agency for 33 years?

Mr. BURNS. In different roles, yes, Senator.

Senator SESSIONS. How would you describe congressional creation of the NRC and its independent status?

Mr. BURNS. How would I describe it?

Senator SESSIONS. Yes, the concept of the independent Nuclear Regulatory Commission?

Mr. BURNS. I think what the Congress did is it tried to establish an agency like other independent regulatory agencies that existed in terms of a multimember commission, bipartisan in the sense that you weren't dominated by persons from one party or the other.

The other thing it did, actually more so under the reorganization plan that President Carter adopted after the Three Mile Island accident, you have the basic principle in the original legislation and the reorganization plan about what I will call majority rule, that basically the Commission decides matters of policy, adjudications and things like that.

In the reorg plan, you have a plan for the chairman in certain areas but basically, it is majority rules, the rule of three, if you will.

Senator SESSIONS. With regard to the concept of the agency, you are open to hear from politicians, American citizens, and special groups but you hold the responsibility, do you not, as an entity to do an independent job, a non-political job in making the decisions that protect the safety and effectiveness of the nuclear power industry?

Mr. BURNS. I think that is the strength of the agency and the structure that is created. I think you are saying that is part of the intention.

Senator SESSIONS. The Chairman talked about Senator Reid and every Senator has a right to be critical and be aggressive with regard to this commission or any other commission. However, a commission has a duty, let me ask you, Mr. Baran, to listen to the inputs from politicians or even Senator Reid. Then you are required to make an independent judgment, are you not?

Mr. BARAN. That is correct.

Senator SESSIONS. Do you agree with that?

Mr. BURNS. I would agree.

Senator SESSIONS. Just looking at the Politico article from 2 weeks ago, one commissioner referring to Senator Reid keeping score against members of the Commission who didn't act as he approved and saying one commissioner was forced out last month and

another is due to depart Sunday after it became clear he would have trouble winning a new term, partly because of their stances on Yucca where Mr. Reid felt strongly and because they joined a revolt against former agency chairman, Gregory Jaczko, a one time Reid aide.

Reid has spent the past 2 years repeatedly trashing one of the commissioners, Commissioner Magwood, calling him a disaster and I won't read the other things he said about him.

Are you prepared to take the heat and do the right thing no matter what some Senator would say about it?

Mr. BURNS. Yes, Senator, I am. Going back to your question on structure, that is one of the reasons that the agency is structured with terms of a specific length because that is one of the things that enhances the independence of the commissioners who serve in those positions.

Senator SESSIONS. A lot of people worried about that.

Do you understand, Mr. Burns, that Congress has established Yucca Mountain as the depository for nuclear waste? Is that the law of the United States?

Mr. BURNS. The Nuclear Waste Policy Act is the law of the United States, yes.

Senator SESSIONS. Mr. Baran and Mr. Burns, is it your duty as Commission members to comply with the law of the United States?

Mr. BARAN. Yes, it is.

Mr. BURNS. Yes.

Senator SESSIONS. Will you do so?

Mr. BARAN. Yes, I will.

Mr. BURNS. Yes, I will comply with the law of the United States.

Senator SESSIONS. With regard to the disclosures, this is an independent agency that has certain responsibilities to conduct its business properly. It has certain internal deliberations. I assume there are rules at the Nuclear Regulatory Commission on what should be disclosed and what should not be disclosed, are there not? Will each one of you answer that yes or no?

Mr. BARAN. That is addressed in the internal Commission procedures, yes.

Senator SESSIONS. Mr. Burns?

Mr. BURNS. Yes, it is addressed there, but also it is governed by the Sunshine Act and some other administrative statutes that govern the agency's operations.

Senator SESSIONS. I understand the chairman and the committee found certain requests from Congress to be improper and have not disclosed certain documents. They have disclosed many. Consistent with the regulations, will you comply with the regulations even though Senators or other groups might ask that you produce documents that, if produced, would be in violation of the regulations duly established by the agency?

Mr. BARAN. The committee and the Congress generally have an important oversight role. I believe the NRC should work to make sure that the committee has the information it needs to perform its constitutional oversight responsibilities.

Senator SESSIONS. Does that trump the rules of the committee on disclosure or should you change the rules before you disclose?

Mr. BARAN. I don't think there is anything about the rules that prevents disclosure.

Senator SESSIONS. Of everything?

Mr. BARAN. I think there could be particularly sensitive documents where it is important to have discussions between the Commission and the committee about how the Commission can best ensure the committee gets the information it needs to perform its duties.

Senator SESSIONS. Mr. Burns? Do you comply with the rules of the committee on disclosure or not?

Mr. BURNS. The rules of the Commission?

Senator SESSIONS. Yes, the Commission.

Mr. BURNS. The rules of the Commission. I think the rules of the Commission are there to guide how the agency responds to it but those rules have to conform to what other basic legal principles that apply, for example, communication with the Congress.

Senator SESSIONS. Presumably the Commission established its rules considering those things and they believe their rules comply with other laws. You were the counsel there. Is that not true?

Mr. BURNS. Right. I operated under the rules of the Commission in 2011 which basically said in difficult questions about disclosure of documents to the Congress, we should be discussing that with the committees and trying to reach accommodation.

I agree with you that the rules essentially are intended to conform to the general legal principles. Again, those are often a difficult area, particularly in communications with the committee.

Senator SESSIONS. Apparently there is an honest disagreement between the Commission and the committee and some of our members on some of these issues. I don't know the details. I respect my colleagues' desire to find out all that they can find out but I also respect there are rules that are to be complied with.

Thank you for that. I will submit some more written questions but I think this is a very important commission. It is important to the future of the country and I hope you will conduct yourselves as independent, responsible leaders and not be pushed around as a result of political pressure.

Thank you very much.

Senator BOXER. Thank you, Senator.

Senator WHITEHOUSE.

Senator WHITEHOUSE. Thank you very much, Madam Chairman.

I think my distinguished colleague's questioning to both of you about the legal rules and the legal analysis relating to the matter of the ongoing congressional oversight of this committee helps explain why you are qualified for this position and why the legal expertise and the congressional oversight experience that Mr. Burns and Mr. Baran respectively bring will be valuable assets to the Nuclear Regulatory Commission as it goes about its business.

My questions have to do with the two topics I mentioned in my opening statement. I understand it is the Department of Energy, not the Nuclear Regulatory Commission, that is primarily involved in developing new nuclear technologies and trying to help move us toward a more carbon free energy posture.

As I understand it, there are ways, particularly where private institutions are involved, that the NRC does have a role. Could you

explain that role, either of you, and let me know what your feeling is about the extent to which your organization, as I said in my opening statement, not become an undue impediment to the development of these important new technologies. Let me start with Mr. Baran.

Mr. BARAN. I think the Nuclear Regulatory Commission's primary function in this regard is to make sure it has an efficient and effective licensing process for new reactors and for new reactor designs.

For example, for small modular reactors, there is a design certification application expected next year and then another that is likely to come the following year. I think it is important for NRC to be thinking ahead of what are the potential novel issues that may be presented by those new designs and start that process early, start having conversations early with the potential applicants so there can be expeditious consideration of those applications when and if they are submitted.

Senator WHITEHOUSE. I think the question, to use your words, should be thinking ahead and starting early, is really at the crux of this because if somebody is interested in putting the investment into developing one of these technologies, to them the regulatory cost and burden down the road is a black box that they can put no value on, either in time or money, then that could be an impediment to going forward.

Even if they could see into the black box, they would actually know that this is doable. The fact that it is a black box, the fact there have not been early conversations, the fact they don't have any sense that the development of those technologies would be welcomed, could itself be the barrier.

I would hope that both of you would agree that would be a very unfortunate, unnecessary and almost improper barrier under these circumstances. Mr. Burns?

Mr. BURNS. Yes, I would agree. The important thing, I think for the Commission and what I would commit to looking at if confirmed, is the question of the clarity with which the agency either expresses its rules or the applicable criteria for these types of designs.

We know basic safety requirements but how do you move through, are the processes there, is the one step licensing really an appropriate process for a prototype or is there a more staged license where you make safety decisions that eventually get you a holistic decision at the end?

Those are the types of things I think if you are looking at the generation for and some of these designs, you are probably going to want to at least consider how you would do that if people come forward, as you say.

Senator WHITEHOUSE. Do you both commit that you will put your attention to those questions as members of the Commission? I don't want this to be just happy answers in a congressional committee and then when you are over there, it is back to the black box or the black hole or whatever you want to call it.

Mr. BURNS. No, I commit to do that.

Mr. BARAN. Yes. It should not be a black box.

Senator WHITEHOUSE. Thank you.

Senator BOXER. Senator, thank you very much.

Senator FISCHER.

Senator FISCHER. Thank you, Madam Chair.

I have some questions for both of you gentlemen.

The NRC's timely review of license submittals is critical to the success of our domestic uranium industry. I mentioned that in my opening statement.

At present, in Nebraska, there are multiple relicensing proposals and new license applications that have, to date, taken 7 years. That is a long time to review.

I have written to the Commission to encourage swift action in order to protect the economic environment of the communities that have relied for decades on these operations, operations that safely and responsibly produce critical fuel for our Nation's domestic nuclear and energy industry.

In response, the Commission has stated that the reviews are continuing, but that it may take another full year before a final decision is made.

Should you be confirmed, will you commit to working with me and my office to engage in these licensing and relicensing efforts so that a final decision is rendered in a timely and efficient manner?

Mr. BARAN. Yes, if confirmed, I would be happy to work with you and take a look at that issue.

Mr. BURNS. I would be happy to look at that. Again, I think it is not unlike the question Senator Whitehouse asked about assuring that the process is fair but also efficient.

Senator FISCHER. Are you aware of the issue I just spoke about? Have you had any contact with the problems we are facing?

Mr. BURNS. Not recently, no.

Senator FISCHER. Thank you.

In a recent vote by the NRC on filtered vents, we have seen Commissioner Magwood express concern with approaches to regulation that rely upon qualitative instead of quantitative factors. He described such an approach as an extraordinary step that goes well beyond previous NRC guidance.

He also noted that Chairman Macfarlane's analysis in that vote could be used to justify essentially any regulatory change.

Can you tell me your view of the proper use of qualitative factors in regulatory decisionmaking by the NRC?

Mr. BARAN. I think over the years, when the NRC has done its cost benefit analysis, typically, as I think most agencies do, it focuses primarily on the quantitative elements of that but it also in the past has considered qualitative factors as well. I think it is important in some cases to consider qualitative factors.

As you point out, that can be challenging because it is not the same enterprise as when it is strictly quantitative. I think there is a role for it on certain occasions but I do think it has to be done carefully.

One of the factors that came up in that particular vote, I believe, was just defense in-depth, the idea that some concerns that NRC looks at are very low probability but high consequence events and sometimes a strictly quantitative review of that can leave out important factors.

Senator FISCHER. You would say it is within the NRC's guidance that those qualitative factors should be looked at?

Mr. BARAN. My understanding is that the guidance does provide for the consideration of qualitative factors.

Senator FISCHER. You would disagree with the commissioner who made those statements, then?

Mr. BARAN. It has been a while since I read that particular vote and I don't know that Commissioner Magwood would say it never makes sense to examine qualitative factors, but I think there can be a role for both quantitative and qualitative.

Senator FISCHER. Mr. Burns?

Mr. BURNS. I am actually not familiar with that particular vote that Commissioner Magwood weighed in on.

Historically, my recollection is that the agency, over the years, tried to apply sort of the best decisionmaking methods, whether what they originally called the deterministic method to more risk informed. When you went risk informed, you do have the consideration of qualitative factors. Again, that may be vote dependent or issue dependent.

You want to make sure that you have a good grounding in the technical analysis that you have but there may be qualitative factors. I would be happy to look at that and be sensitive to that. Unfortunately, I just cannot comment on the particular filtered vent issue.

Senator FISCHER. Thank you. Just one more question if I have time?

Senator BOXER. Go ahead.

Senator FISCHER. On May 19, 2014, the Commission acted on an NRC staff recommendation regarding three specific recommendations arising from the near term task force report's suggestion to review whether the NRC should establish a logical, systematic and coherent regulatory framework for adequate protection that appropriately balances defense, in-depth and risk considerations.

The three staff recommendations were approved by the Commission even though the NRC staff also acknowledged that these changes are not needed to maintain safety of nuclear power reactors.

Do you agree with the action that was taken by the Commission?

Mr. BURNS. Again, I am not sure exactly what they did. I recall that the No. 1 task force recommendation was this notion of looking more holistically. I think importantly, the agency needs to carry out, in the particulars applied to particular plants, particular licensing or safety issues, what it does.

There may be some benefit in making a greater coherence. Again, I would be happy to look at that. I am just not familiar with exactly what they did.

Senator FISCHER. If these requirements are imposed on nuclear reactors and it hasn't been shown that you are going to see any enhancement of safety, do you think it appropriate to require that then and the cost involved for those reactors?

Shouldn't we have to prove it is for safety concern when we have an argument going on, not an argument but a discussion going on between staff and the Commission and it is moved on anyway?

Mr. BURNS. Yes, and I think you need to have something that provides a justification for what you are doing and that there is a benefit to it. As I said, I am not familiar with the May vote. I am familiar with the issue that may have led to it from the original task force report.

I would be happy to take a look at that. Generally, I think you want to get to a point where it makes sense for what you are doing that there is a safety benefit for it.

Senator FISCHER. Right. We are all concerned for the safety. I think we all agree upon that, but when requirements are made by government with no proof of benefit, I have concerns with the cost.

Mr. Baran, would you like to reply as well, please?

Mr. BARAN. I am not familiar with that particular vote but I would note that the NRC has something called a backfit rule which says if you are going to apply a new regulatory requirement to an existing facility, in that situation unless that new requirement is necessary for adequate protection of public health and safety, the benefits of that requirement would need to exceed the cost.

Senator FISCHER. Thank you both very much. Again, thank you for being here today.

Thank you, Madam Chair.

Senator BOXER. Thank you so much.

I am going to ask each of you a question that I have to ask all nominees. There are three questions, yes or no.

Do you agree, if confirmed, to appear before this committee, or designated members of this committee and other appropriate committees of the Congress, and provide information subject to appropriate and necessary security protection with respect to your responsibilities?

Mr. BARAN. Yes.

Mr. BURNS. Yes.

Senator BOXER. Do you agree to ensure that testimony, briefings and documents in electronic and other forms of communication of information are provided to this committee, its staff and other appropriate committees in a timely manner? By that, I mean all members of this committee regardless of party?

Mr. BARAN. Yes.

Mr. BURNS. Yes, I do.

Senator BOXER. Three, do you know of any matters which you may or may not have disclosed that might place you in a conflict of interest if you are confirmed?

Mr. BARAN. No.

Mr. BURNS. No.

Senator BOXER. Thank you very much.

I am going to place in the record Section 6 of the Nuclear Waste Policy because it is important. I wish I had the chance to discuss this with Senator Sessions, but I will talk with him about it.

Section 6 of the Nuclear Waste Policy only allows agencies to spend the money Congress gives them for Yucca. In 2010, for the 2011 year, all Congress gave NRC was \$10 million that was requested to close out Yucca. That is what the Commission did and did not vote to overturn that decision.

I think it is important. It keeps coming back like a bad dream, but the fact is Congress voted the money and it was only \$10 mil-

lion. That was enough to shut it down. I wanted to get that in the record.

[The referenced information follows:]

NUCLEAR WASTE POLICY ACT OF 1982¹

[As Amended Through P.L. 105-245, Enacted October 7, 1998]

An Act to provide for the development of repositories for the disposal of high-level radioactive waste and spent nuclear fuel, to establish a program of research, development, and demonstration regarding the disposal of high-level radioactive waste and spent nuclear fuel, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Nuclear Waste Policy Act of 1982".

[42 U.S.C. 10101 note]

TABLE OF CONTENTS²

- Sec. 1. Short title and table of contents.
- Sec. 2. Definitions.
- Sec. 3. Separability.
- Sec. 4. Territories and possessions.
- Sec. 5. Ocean disposal.
- Sec. 6. Limitation on spending authority.
- Sec. 7. Protection of classified national security information.
- Sec. 8. Applicability.
- Sec. 9. Applicability.

TITLE I—DISPOSAL AND STORAGE OF HIGH-LEVEL RADIOACTIVE WASTE, SPENT NUCLEAR FUEL, AND LOW-LEVEL RADIOACTIVE WASTE

- Sec. 101. State and affected Indian tribe participation in development of proposed repositories for defense waste.

SUBTITLE A—REPOSITORIES FOR DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL

- Sec. 111. Findings and purposes.
- Sec. 112. Recommendation of candidate sites for site characterization.
- Sec. 113. Site characterization.
- Sec. 114. Site approval and construction authorization.
- Sec. 115. Review of repository site selection.
- Sec. 116. Participation of States.
- Sec. 117. Consultation with States and Indian tribes.
- Sec. 118. Participation of Indian tribes.
- Sec. 119. Judicial review of agency actions.
- Sec. 120. Expedited authorizations.
- Sec. 121. Certain standards and criteria.
- Sec. 122. Disposal of spent nuclear fuel.

¹This Act consists of Pub. L. 97-425 (96 Stat. 2201) enacted on Jan. 7, 1983, and subsequent amendments. The Act was extensively amended in identical form by Pub. L. 100-202 (101 Stat. 1329-121) and Pub. L. 100-203 (101 Stat. 1330-243) on Dec. 22, 1987. The Act appears in the United States Code at 42 U.S.C. 10101 et seq. Bracketed notes at the end of each section indicate the United States Code citation for the reader's convenience.

²For the correct type size for the heading "TABLE OF CONTENTS", see volume 96 Stat. 2201.

7	NUCLEAR WASTE POLICY ACT OF 1982	Sec. 8
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TERRITORIES AND POSSESSIONS

SEC. 4. Nothing in this Act shall be deemed to repeal, modify, or amend the provisions of section 605 of the Act of March 12, 1980 (48 U.S.C. 1491).

[42 U.S.C. 10103]

OCEAN DISPOSAL

SEC. 5. Nothing in this Act shall be deemed to affect the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.).

[42 U.S.C. 10104]

LIMITATION ON SPENDING AUTHORITY

SEC. 6. The authority under this Act to incur indebtedness, or enter into contracts, obligating amounts to be expended by the Federal Government shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

[42 U.S.C. 10105]

PROTECTION OF CLASSIFIED NATIONAL SECURITY INFORMATION

SEC. 7. Nothing in this Act shall require the release or disclosure to any person or to the Commission of any classified national security information.

[42 U.S.C. 10106]

APPLICABILITY

SEC. 8. (a) ATOMIC ENERGY DEFENSE ACTIVITIES.—Subject to the provisions of subsection (c), the provisions of this Act shall not apply with respect to any atomic energy defense activity or to any facility used in connection with any such activity.

(b) EVALUATION BY PRESIDENT.—(1) Not later than 2 years after the date of the enactment of this Act, the President shall evaluate the use of disposal capacity at one or more repositories to be developed under subtitle A of title I for the disposal of high-level radioactive waste resulting from atomic energy defense activities. Such evaluation shall take into consideration factors relating to cost efficiency, health and safety, regulation, transportation, public acceptability, and national security.

(2) Unless the President finds, after conducting the evaluation required in paragraph (1), that the development of a repository for the disposal of high-level radioactive waste resulting from atomic energy defense activities only is required, taking into account all of the factors described in such subsection, the Secretary shall proceed promptly with arrangement for the use of one or more of the repositories to be developed under subtitle A of title I for the disposal of such waste. Such arrangements shall include the allocation of costs of developing, constructing, and operating this repository or repositories. The costs resulting from permanent disposal of high-level radioactive waste from atomic energy defense activities shall

Senator BOXER. I want to say to both of you I am so impressed with your experience. I also appreciate the attitude you bring here because you are seasoned professionals and understand that there are disagreements. We just want from you what you think is the right thing for this industry in terms of safety.

Of course my colleague, Senator Inhofe, makes a point. We also have to make sure we look at how we are putting together these regulations and whether they make sense or not.

I want to thank both of you.

I hope to move this very, very quickly. It will be up to everyone to cooperate on that.

I want to thank Senator Vitter in particular for really helping us move this forward. It was very magnanimous of him. He said to me, well, I hope you will cooperate when we want to move people forward. Of course, we will.

We are going to move on this on Thursday and have a vote. We will let everyone know. We need your answers yesterday.

Thank you very much.

We stand adjourned.

[Whereupon, at 11:32 a.m., the committee was adjourned.]

